

Chapter R300 - Judiciary

Part 1 Tribal Court Regulations

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COURT RULES AND PROCEDURES

Chapter 1. Recognition and Enforcement of Foreign Court Judgments

Section 1.000. Purpose and Definitions

1.001 *Purpose.* The purpose of this Chapter is to facilitate, improve and extend by reciprocal legislation or court rule the enforcement and/or recognition of judgments between the State of Michigan and the various Indian tribes within Michigan and among the various Indian tribes within Michigan, as well as to make uniform the law relating thereto.

1.002 *Definitions.* When used in this Chapter, unless the content otherwise indicates:

- (A) "*Attorney*" means an individual who is a current member of the State Bar of Michigan or some other State. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.
- (B) "*Court*" means the Tribal Court of Little River Band of Ottawa Indians.
- (C) "*Foreign Court*" means all other courts including federal, state, or tribal courts and courts of a foreign country excepting the Little River Band of Ottawa Indians.
- (D) "*Foreign Judgment*" means any judgment, decree, or order by any United States federal court, state court, other tribal court or Court of a foreign country which is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory, or other relief.
- (E) "*Judgment Creditor*" means one who has had a judgment rendered in his or her favor; judgment creditor is synonymous with the term judgment holder.
- (F) "*Judgment Debtor*" means the party against whom a judgment has been rendered.
- (G) "*Judgment Holder*" means one who has had a judgment rendered in his or her favor; judgment holder is synonymous with the term judgment creditor.
- (H) "*Lawyer*" is synonymous with the term "attorney". Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.
- (I) "*Lay Advocate*" means a person who is a non-lawyer and who has been qualified by this Court to serve as an advocate on behalf of a party. Further, a lay advocate must be admitted to practice before this Court pursuant to Chapter 3 herein.
- (J) "*Rendering Jurisdiction*" means the jurisdiction in which the foreign judgment was entered.
- (K) "*Rules*" means the Rules of the Little River Band of Ottawa Indians Court
- (L) "*Tribe*" means the Little River Band of Ottawa Indians.

Section 1.100. Recognition and Enforcement

1.101 *Michigan Court Records and Judgments.* The judgments of a Michigan state court shall have the same full recognition and enforcement in the Court(s) of this Tribe, provided that:

- (A) The applicable Michigan state court and/or Michigan legislature provides reciprocal recognition and enforcement to the judgments of the Little River Band of Ottawa Indians; and
- (B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 1.200 hereunder whenever a judgment from a Michigan state court is involved.

1.102 *Tribal Court Records and Proceedings.* The judgments of another tribal court of a federally recognized tribe shall have the same full recognition and enforcement in the Court(s) of the Little River Band of Ottawa Indians, provided that:

- (A) The applicable tribal court provides reciprocal full recognition and enforcement to the judgments of this Indian Tribe; and

(B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 1.200 hereunder whenever a judgment from a tribal court is involved.

1.103 *Federal Court and other State Court Proceedings.* The judgments of a U.S. federal court or other state court (with the exception of Michigan state courts wherein Section 1.101 shall apply) may have, in the discretion of this Court, the same recognition and enforcement in the Court(s) of the Little River Band of Ottawa Indians, provided that:

(A) The applicable federal court or other state court provides reciprocal full recognition and enforcement to the judgments of this Indian Tribe; and

(B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 1.200 hereunder whenever a judgment from a U.S. federal court or other state court is involved.

This Court shall have full discretion as to whether recognition and enforcement shall be granted and shall be guided by the best interests of this Tribe and the parties, which are supplementary to the provisions set forth above in this Section 1.103.

1.104 *Court Records and Proceedings of a Foreign Country.* The judgments of a court in a foreign country may have, in the discretion of this Court, the same recognition and enforcement in the Court of the Little River Band of Ottawa Indians, provided that:

(A) The applicable court of a foreign country provides reciprocal recognition and enforcement to the judgments of this Indian Tribe; and

(B) The person seeking recognition and enforcement complies with the conditions and procedures set forth in Section 1.200 hereunder whenever a judgment from a court of a foreign country is involved.

This Court shall have full discretion as to whether recognition and enforcement shall be granted and shall be guided by the best interests of this Tribe and the parties, which are supplementary to the provisions set forth above in this Section 1.104.

Section 1.200. Recognition and/or Enforcement of Foreign Judgments

1.201 *Application of Recognition and Enforcement to Final and Conclusive Judgments.* In accordance with the recognition and enforcement provisions set forth in Sections 1.101 through 1.104, a foreign judgment that is final and conclusive is enforceable in this Court pursuant to the following Section.

1.202 *Registration of Foreign Judgment.* A person seeking enforcement of a foreign judgment shall file:

(A) A copy of the foreign judgment, which has been authenticated by the clerk or registrar of the foreign court in the following manner:

(1) The clerk or registrar of the foreign court must attest in writing that s/he:

(a) Is the Clerk or register of the subject foreign court;

(b) Is the custodian of the records of the subject foreign court; and

(c) Has compared an annexed copy of the foreign judgment from the case with the original(s) on file and of record in the foreign court, and has found the copy of the foreign judgment to be a true copy of the whole of such original(s).

(2) Upon completing the written attestation referenced in Section 1.202 (A)(1) above, the clerk or registrar of the foreign court must:

(a) Sign and date said attestation;

(b) Affix the seal of the foreign court to said attestation; and

(c) Annex a true copy of the foreign judgment to said attestation;

(B) A sworn affidavit by the judgment holder, or his/ her lawyer or lay advocate, which includes the

following:

- (1) The name and last known post office address of the judgment debtor and the judgment creditor;
- (2) That the judgment is final and that no appeal is pending;
- (3) That no subsequent orders vacating, modifying or reversing the judgment have been entered in the rendering jurisdiction;
- (4) Proof that the person against whom the foreign judgment has been rendered (i.e., judgment debtor) is subject to the jurisdiction of this Court with regard to enforcement of said judgment; and
- (5) Proof that the court from which the foreign judgment was issued provides reciprocal full faith and credit to the judgments of this Tribe; and

(C) A filing fee for registering said foreign judgment in the amount of twenty-five(\$25) dollars.

1.203 *Notice of Registration of Foreign Judgment.* Upon the filing of the foreign judgment, attestation, affidavit and filing fee, the Clerk of the Court shall promptly mail notice of the filing of the foreign judgment along with a copy of the foreign judgment, attestation, and affidavit referenced in Section 1.202 to the judgment debtor at the address provided by the judgment creditor and shall make a note of the mailing in the docket and/or complete a proof of mailing. The notice to the judgment debtor shall include the following:

- (A) The name and post office address of the judgment holder and the judgment holder's lawyer or lay advocate, if any, in this Court; and
- (B) A directive that an order entering the enforcement of the foreign judgment shall be entered by the Court within twenty-one (21) days of the same having been served on the judgment debtor unless the judgment debtor files written objections with the Court along with a request for a hearing on the same within said twenty-one (21) day period.

In addition, the judgment holder shall also mail a notice of the filing along with a copy of the foreign judgment, attestation, and affidavit referenced in Section 1.202 to the judgment debtor and shall file proof of mailing with the Clerk of the Court. Such notice shall be served on the judgment debtor in a manner consistent with the proof of service provision set forth in these Rules.

1.204 *Objections; Hearing; Entry of Order Where Objections.* In the event that the judgment debtor files written objections within the twenty-one (21) day period set forth in Section 1.203 above along with a request for a hearing, the Clerk of the Court shall send by first-class mail a copy of said objections to the judgment holder or his/her lawyer. In addition, the Clerk of the Court shall send by first-class mail a notice of hearing setting forth the date and time of hearing to the judgment holder and judgment debtor, or their respective lawyer(s) or lay advocate(s). The judgment debtor at the hearing will be required to show cause why the foreign judgment shall not be enforced by this Court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the Court shall issue an order either granting or denying enforcement of the foreign judgment.

1.205 *Entry of Order Where no Objections.* In the event that the judgment debtor does not file any written objections within the twenty-one (21) day time period set forth in Section 1.203 above, an order granting the enforcement of the foreign judgment shall be issued by the Court.

1.206 *Not Enforceable or Non-recognizable Foreign Judgment.* A foreign judgment is not enforceable or is non-recognizable under the following circumstances, including but not limited to:

- (A) The judgment was rendered by a process that does not assure the requisites of an impartial administration of justice including but not limited to due notice and a hearing;
- (B) The foreign court did not have both personal jurisdiction over the judgment debtor and jurisdiction over the subject matter;

- (C) The judgment was obtained by fraud;
- (D) The cause of action on which the judgment is based is repugnant to the public policy or tribal custom of the Tribe;
- (E) The judgment involves enforcement of child custody provisions, and
 - (1) The foreign court did not have jurisdiction over the child(ren); or
 - (2) The provisions of the Indian Child Welfare Act [25 USC Sections 1901-1963], if applicable, were not properly followed; or
 - (3) Due process was not provided to all interested persons participating in the foreign court proceeding; or
 - (4) The foreign court proceeding violated the public policies, customs or common law of the Tribe; or
- (F) The judgment involves enforcement of a criminal judgment wherein the Court has the authority to otherwise adjudicate a criminal proceeding against a Defendant.

1.207 *Appeal; Stay of Execution; Stay of Proceedings.* If the judgment debtor satisfies the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

1.208 *Postjudgment Proceedings Regarding Foreign Judgment; No Waiver of Immunity.*

(A) The entry of the order enforcing the foreign judgment by this Court shall entitle the judgment holder to enforce its judgment against the judgment debtor in any manner currently available for judgment creditors or judgment holders in this Rule.

(B) The Tribe does not waive its immunity from suit with regard to the enforcement of a foreign judgment in any postjudgment proceedings even when said Tribe is served as a garnishee Defendant for the wages or property of an employee who is a judgment debtor.

Section 1.300. Construction of Rule

1.301 *Construction of Rule.* This Rule shall be so construed as to effectuate its general purpose to make uniform the law of those jurisdictions which enact it.

Section 1.400. Short Title

1.401 *Short Title.* This Rule shall be known and may be cited as the "Recognition and Enforcement of Tribal, State and Other Judgments".

Section 1.500. Effective Date

1.501 *Effective Date.* This Rule becomes effective on January 26, 1999 (Court Order 99-0126).

Chapter 2. Ethical Conduct

Section 2.000. Purpose and Definitions

2.001 *Purpose.* The purpose of this Chapter is to provide for and guide the professional conduct of judges, court clerks, magistrates and administrators of this Court as well as lawyers and lay advocates who practice before this Court.

2.002 *Definitions.* When used in this Chapter, unless the content otherwise indicates:

(A) "*Attorney*" means an individual who is a current member of the State Bar of Michigan or some other state. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be

admitted to practice before this Court pursuant to Chapter 3 herein.

(B) "*Court*" means the Tribal Court of the Little River band of Ottawa Indians.

(C) "*Tribe*" means the Little River Band of Ottawa Indians.

(D) "*Lawyer*" is synonymous with the term "attorney". Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.

(E) "*Lay Advocate*" means a person who is a non-lawyer and who has been qualified by this Court to serve as an advocate on behalf of a party. Further, a lay advocate must be admitted to practice before this Court pursuant to Chapter 3 herein.

(F) "*Court Personnel*" means any personnel employed with Court including but not limited to the following: judge, clerk, magistrate, or court administrative.

(G) "*Tribal Council*" means the legislative body of the Tribe, whether elected or appointed, who makes or legislates the law; Tribal Council is synonymous with the term Executive Council.

Section 2.100. Judicial Conduct

2.101 *Applicability of this Code of Judicial Conduct.* This Code applies to anyone, whether or not a lawyer, who is an officer of a tribal judicial system and is performing judicial functions. Also, this Code applies to both trial and appellate tribal judges, who serve the Court on a full-time, part-time or pro tempore basis.

2.102 *Integrity and Independence of Tribal Judiciary.* A tribal court judge should uphold the integrity and independence of the tribal judiciary in that an independent and honorable tribal judiciary is indispensable to justice in the tribal community. A judge should participate in establishing, maintaining, and enforcing, and should himself or herself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant(s) and the public, not the judiciary. The provisions of this Code (Section 2.101 through 2.110, inclusive) should be construed and applied to further these objectives.

2.103 *Impropriety and the Appearance of Impropriety.* A tribal court judge should avoid all impropriety and the appearance of impropriety in all his/her activities. In addition, a tribal judge:

(A) Should respect and comply with the law and tradition of the Tribe and at all times should act in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary;

(B) Should not allow family, social or other relationships to influence his/her judicial conduct. S/he should not attempt to use the prestige of his/her office to advance the private interests of himself/herself or others, nor should s/he convey the impression that anyone has special influence on the judge; and

(C) Should not appear as a witness in a court proceeding unless subpoenaed.

2.104 *Performance of Duties Impartially and Diligently.* A tribal court judge should perform the duties of the office impartially and diligently. The judicial activities of a tribal judge should take precedence over all other activities. The judicial duties of the judge include all the duties of the office as prescribed by tribal law, custom or tradition. In the performance of these duties, the following standards apply:

(A) *Adjudicative Responsibilities:*

(1) A tribal court judge should adhere to the laws, customs and traditions of the Tribe. S/he should be unswayed by partisan interests, public clamor, political pressure, or fear of criticism, and should resist influences on the Court by other tribal officials, governmental officials or any others attempting to improperly influence the Court.

(2) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, lay advocates and others with whom s/he deals in his/her official capacity and should require

similar conduct of other persons in court proceedings and those court personnel who are subject to the judge's direction and control.

(3) A tribal court judge should accord to every person who is legally interested in any proceeding, or his/her lawyer or other representative, full right to be heard according to tribal law and tradition, and except as authorized by law, neither consider nor permit ex parte or other communication with a litigant or his/her attorney or lay advocate concerning a pending or impending proceeding unless all parties to the proceeding are present.

(4) A tribal court judge should maintain order in the Court. S/he should not interfere in the proceedings except where necessary to protect the rights of the parties.

(5) A tribal court judge should dispose promptly of the business of the Court.

(6) A tribal court judge should not comment publicly on any pending Court proceeding and should also prohibit other court personnel from making such public comment. However, this subsection does not prohibit a judge from making public statements in the course of his/her official duties or from explaining for public information the procedures of the Court or his/her holdings or actions.

(B) *Administrative Responsibilities:*

(1) A judge should diligently perform his/her administrative responsibilities with a high degree of integrity and diligence.

(2) A judge should require his/her staff and court officials to observe high standards of integrity and diligence. As such, a judge should direct his/her staff and court officials subject to his/her control to observe high standards of fidelity, diligence and courtesy to litigants, jurors, witnesses, lawyers, lay advocates and others with whom they deal in their official capacity.

(3) A judge should initiate appropriate disciplinary measures against a judge, lawyer, lay advocate, or court personnel for non-professional conduct of which the judge may become aware.

(C) *Disqualification:*

(1) A tribal court judge should disqualify himself/herself in a proceeding in which his/her impartiality might reasonably be questioned, including instances where:

(a) The judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(b) The judge served as a lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;

(c) The judge knows that s/he individually (or any member of the judge's family who resides in his/her household) has a financial interest in the subject matter of the controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

(d) The judge or his/her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party; or

(ii) is acting as a lawyer or lay advocate in the proceeding; or

(iii) is known by the judge to have an interest that could be substantially

affected by the outcome of the proceeding; or

(iv) is to the tribal judge's knowledge likely to be a material witness in the proceeding.

(D) *Alternative to disqualification.* A judge disqualified pursuant to Section 2.104(C)(1) hereunder may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her disqualification. If based upon such disclosure the parties and lawyers or lay advocates, independent of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding.

2.105 *Improvement of the Legal System and the Administration of Justice.* A tribal court judge may engage in activities to improve the law, the legal system and the administration of justice; in fact, to the extent that his/her time permits, s/he is encouraged to do so, either independently or through a legal/judicial association, judicial conference, or other organization dedicated to the improvement of the law. Therefore, a judge, subject to the proper performance of his/her judicial duties, may engage in the following activities:

(A) The judge may speak, write, lecture, teach and participate in other activities concerning tribal law and custom, the legal system of the Tribe, the administration of justice, and the law in general;

(B) The judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal legal system and the administration of justice of general concern to tribal members, or of personal concern. When speaking to the public, press, or others on matters other than the administration of tribal justice, the judge shall not identify himself/herself as the tribal judge and shall make it clear that s/he is not speaking in his/her capacity as tribal judge; and

(C) The judge may serve as a member, officer, or director of an organization or tribal governmental agency devoted to the improvement of tribal law, its legal system or the administration of justice. The judge may assist such an organization in raising funds and may participate in the management and investment of such funds. S/he may make recommendations to public and private fund-granting agencies on projects and programs concerning tribal law, its legal system and the administration of justice.

2.106 *Extra-Judicial Activities.*

(A) *Avocational Activities:* A tribal judge may write, lecture, teach, speak, and consult on non-legal subjects, appear before public non-legal bodies, and engage in the arts, sports, and other social and recreational activities, provided such avocational activities do not detract from the dignity of his/her office or interfere with the performance of his/her judicial duties.

(B) *Civic and Charitable Activities:* A tribal judge may participate in civic and charitable activities that do not reflect adversely upon his/her impartiality or interfere with the performance of his/her judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization, whether tribal or otherwise, provided that a tribal judge does not participate if it is likely that the organization will be involved in proceedings which would ordinarily come before him/her or would be involved in adversarial proceedings in any tribal court.

(C) *Financial Activities:*

(1) A tribal judge should avoid financial and business dealings that tend to reflect adversely on his/her judicial duties, exploit his/her judicial position, or involve him/her in frequent business transactions with lawyers or others likely to come before the Court on which s/he serves.

(2) Because it is recognized that the position of tribal judge may be a part-time position, such

a tribal judge may accept other employment and participate in the operation of a business, legal or otherwise in nature, subject to the following:

(a) A part-time tribal judge should not practice law either as a lawyer or an advocate:

(i) in the tribal court in which he or she serves; or

(ii) in any court subject to the appellate jurisdiction of the tribal court or council on which he or she serves; and

(b) A part-time tribal judge should not act as a lawyer or advocate in any proceeding in which he or she has judicially served or in any related proceeding.

(3) Neither a judge nor a member of his/her family residing in his/her household should accept a gift, bequest, favor, or loan from anyone if the same would affect or appear to affect his/her impartiality.

(D) *Extra-Judicial Appointments:* A tribal judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A tribal judge may represent the Tribe on ceremonial occasions or in connection with historical, educational, and/or cultural activities.

2.107 *Political Activities.*

(A) A tribal court judge should refrain from political activity inappropriate to his/her judicial office. However, a judge or candidate for judicial office may attend political gatherings; speak to such gatherings on his/her own behalf or on behalf of other judicial candidates; and/or contribute to a political party.

(B) A tribal judge shall not be a candidate for or serve on the Tribal Council, nor shall a tribal judge be actively involved in the campaign of another for Tribal Council.

(C) A tribal court judge should refrain from all political activities or actions which could be interpreted in the tribal community as supporting any political position except that the community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard. This prohibition does not mean that a judge cannot, if s/he chooses, engage in activities of electoral politics at the local, state, or national level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the tribal community.

(D) A candidate, including an incumbent judge, for a tribal judicial office that is filled by tribal election or appointment:

(1) Should maintain the dignity appropriate to the judicial office and should refrain from any political activity which might interfere with the performance of his/her judicial duties. Further, a tribal court judge should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her; and/or

(2) Should not make pledges or promises of conduct in judicial office other than the faithful and impartial performance of the duties of the office, nor announce his/her views on disputed legal or political issues.

2.108 *Continuing Educational Activities.* A judge, regardless of their education and experiences prior to being appointed or elected a judge, should seek further legal and pertinent non-legal education designed to improve their performance as a judge.

2.109 *Short Title.* This Code shall be known and may be cited as the "Code of Tribal Judicial Conduct".

2.110 *Effective Date.* This Code becomes effective on July 10, 1998 (Constitutional Ref.).

Section 2.200. Code of Conduct for Tribal Court Clerks, Magistrates, Administrators and Other Court Personnel

2.201 *Applicability of this Code of Court Personnel.* This Code applies to court clerks, court magistrates, court administrators or other similar court personnel who are employed within a tribal judicial system, whether such employment is on a full-time, part-time or pro tempore basis.

2.202 *Integrity and Independence of Court Personnel.* Court personnel should uphold the integrity and independence of the judiciary and of the court personnel's office in that an independent and honorable judiciary is indispensable to justice in the tribal community. Therefore, court personnel should observe and impart to other court personnel high standards of conduct so that the integrity and the independence of the judiciary may be preserved and so that the court personnel's office may reflect a devotion to serving the public. The provisions of this Code (Sections 2.201 through 2.210, inclusive) should be construed and applied to further these objectives. The standards of this section shall not affect or preclude other standards which may be promulgated by the Court.

2.203 *Impropriety and the Appearance of Impropriety.* Court personnel should not engage in any activity which would put into question the propriety of conduct in carrying out the duties of the office, including but not limited to the following:

(A) Court personnel shall not allow family, social, or other relationships to influence official conduct or judgment. Court personnel shall not lend the prestige of their office to advance the interests of himself/herself or others, nor should court personnel convey, or others be permitted to convey, the impression that they are in a special position to influence the court personnel;

(B) Court personnel, as well as family member(s) who reside in the same household as the court personnel, should not accept a gift, bequest, favor, or loan from any person whose interests have come, or are likely to come, before said court personnel or from any other person under circumstances which might reasonably be regarded as influencing the performances of the duties of the office;

(C) Court personnel should abstain from public comment about pending or impending Court proceedings and should require similar abstention on the part of other court personnel. Court personnel should never disclose to any person any confidential information received in the course of official business, nor should such information be employed for personal gain;

(D) Court personnel should avoid favoritism, unfairness, or nepotism in connection with the hiring, discharge, or treatment of subordinate court staff;

(E) Court personnel should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the Court in a biased manner, which improperly favors any litigant or attorney or other representative, nor imply that such court personnel is in a position to do so; and/or

(F) Court personnel should not practice law.

2.204 *Performance of Duties Impartially and Diligently.* The official duties of court personnel take precedence over all activities. The official duties include all the duties of the court personnel's respective office as prescribed by law or by order of the tribal court. In the performance of these duties, the following standards apply:

(A) Court personnel should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the tribal judiciary and the respective court personnel's office; and

(B) Court personnel should be faithful to the highest standard of the profession and maintain professional competence in it. Also, court personnel should be patient, dignified, courtesy, and fair

to all persons whom s/he has contact with in an official capacity such as litigants, jurors, witnesses, lawyers, lay advocates and others, and should require similar conduct from subordinate staff and others subject to his/her direction and control.

2.205 *Improvement of the Legal System and the Administration of Justice.* Court personnel, subject to the proper performance of official duties, may engage in the following quasi-official activities:

(A) Court personnel may speak, write, lecture, teach and participate in other activities concerning court management, the legal system, and the administration of justice; and

(B) Court personnel may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. Court personnel should be available to the public-at-large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the tribal court system.

2.206 *Extra-Official Activities.*

(A) *Avocational Activities:* Court personnel may write, lecture, teach, and speak on subjects unrelated to the profession, and may engage in the arts, sports, and other social and recreational activities, provided such avocational activities do not detract from the dignity of the office, interfere with performance of official duties, or adversely reflect on the operation and dignity of the Court.

(B) *Civic and Charitable Activities:* Court personnel may participate in civic and charitable activities that do not detract from the dignity of the office or interfere with the performance of official duties. Court personnel may serve as an officer, director, trustee or advisor of a civic or charitable organization and solicit funds for any such organization, subject to the following limitations:

(1) Court personnel should not use or permit the use of the prestige of the court personnel's office in the solicitation of funds;

(2) Court personnel should not solicit subordinate staff to contribute to or participate in any civic or charitable activity, but may call their attention to a general fund-raising campaign such as the United Way; and

(3) Court personnel should not solicit funds from lawyers or persons likely to come before the respective court personnel's office or the Court served.

(C) *Financial Activities:* Without the express permission of the Court, court personnel may not carry on financial and business dealings, including services as a fiduciary. Such permission shall not be granted in any case where the activity would tend to reflect adversely on impartiality, interfere with the proper performance of official duties, exploit an official position, or come before the respective court personnel's office or the Court served.

(D) *Extra-Official Appointments:* Court personnel should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

(E) *Compensation for Quasi-Official and Extra-Official Activities:* Court personnel may from time to time receive compensation for certain quasi-official and extra-official activities permitted by this Code (e.g. such as the preparation of a hearing or trial transcript for a party) if the source of such payment does not influence or give the appearance of influencing the court personnel in the performance of official duties or otherwise give the appearance of impropriety, subject to the following:

(1) *Compensation:* Compensation should not exceed a reasonable amount nor should it exceed that normally received by others for the same activity; and

(2) *Records:* Court personnel must keep records and file reports of such compensation as may be required by tribal law or court rule.

2.207 *Political Activities.* Court personnel should refrain from partisan political activity and

(A) Should not act as a leader or hold office in a political organization; or

(B) Should not make speeches for or publicly endorse a political organization, candidate or event; or

(C) Should not solicit funds or contribute to a political organization, candidate or event; or

(D) Should not become a candidate for political office other than if their role with the court is an elected position (e.g., magistrate); or

(E) Should not otherwise actively engage in partisan political activities.

However, court personnel may engage in non-partisan political activity that does not tend to reflect adversely on the dignity of the Court or the respective court personnel's office or interfere with the proper performance of official duties.

2.208 *Continuing Educational Activities.* Court personnel, regardless of their education and experience prior to being appointed or elected as court personnel, should seek further legal and pertinent non-legal education designed to improve their performance as court personnel.

2.209 *Short Title.* This Code shall be known and be cited as the "Code of Conduct for Tribal Court Clerks, Magistrates, Administrators and Other Court Personnel."

2.210 *Effective Date.* This Code shall become effective on July 10, 1998 (Constitutional Ref.).

Section 2.300. Code of Ethics for Lawyers and Lay Advocates

2.301 *Applicability of this Code of Ethics for Lawyers and Lay Advocates.* This Code shall apply to all persons, whether licensed attorneys or lay advocates, who are admitted to practice before the Court. It is recognized that attorneys who are admitted to practice before the Court are also members of the State Bar of Michigan or some other State and are therefore subject to discipline under the appropriate State ethical rules. This Code is not intended to preempt or supersede any State authority to discipline attorneys for any conduct prohibited by this Code.

COMMENT: This Code of Ethics is primarily based on the Michigan Rules of Professional Conduct. However, the Tribe made changes in said Rules to conform the same to tribal law, custom and preferred practice.

2.302 *Purpose.* This Code is adopted both as an inspirational guide to the persons practicing before the Tribal Court and as a basis for disciplinary action when the conduct of a person falls below the required minimum standards stated in the rules set forth below.

2.303 *Definitions.* When used in this Subchapter (2.301 through 2.313, inclusive) the following definitions apply in addition or supplemental to the terms defined in Sections 2.002, unless the content otherwise indicates:

(A) "*Belief*" or "*believes*" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances, traditions and customs.

(B) "*Consult*" or "*consultation*" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

(C) "*Firm*" or "*law firm*" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization, and lawyers employed in a legal services organization.

(D) "*Fraud*" or "*fraudulent*" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or the failure to apprise another of relevant information.

(E) "*Knowingly*," "*known*," or "*knows*" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances.

(F) "*Lawyer*" or "*attorney*" includes a lay advocate admitted to practice before Tribal Court.

(G) "*Partner*" denotes a member of a partnership and/or a shareholder in a law firm organized as a professional corporation.

(H) "*Person*" includes a corporation, an association, a trust, a partnership or any other organization or legal entity.

(I) "*Reasonable*" or "*reasonably*" when used in relation to conduct by a lawyer, denotes the conduct of a reasonably prudent and competent lawyer.

(J) "*Reasonable belief*" or "*reasonably believes*" when used in reference to a lawyer, denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(K) "*Reasonably should know*" when used in reference to a lawyer, denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(L) "*Substantial*" when used in reference to degree or extent, denotes a material matter of clear and weighty importance.

(M) "*Tribal Court*" means the Tribal Court of the Little River Band of Ottawa Indians.

2.304 *Client - Lawyer Relationship.* The following provisions apply to the client-lawyer relationship:

(A) *Competence.* A lawyer shall provide competent representation to a client. A lawyer shall not:

- (1) Handle a legal matter which the lawyer knows or should know that the lawyer is not competent to handle, without associating with a lawyer who is competent to handle it;
- (2) Handle a legal matter without preparation adequate in the circumstances; or
- (3) Neglect a legal matter entrusted to the lawyer.

(B) *Scope of Representation.*

(1) A lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law and this Code. A lawyer does not violate this rule by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process. A lawyer shall abide by a client's decision whether to accept an offer of settlement or mediation evaluation of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive a jury trial, and whether the client will testify. In representing a client, a lawyer may, where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

(2) A lawyer may limit the objectives of the representation if the client consents after consultation.

(3) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good-faith effort to determine the validity, scope, meaning, or application of the law.

(4) When a lawyer knows that a client expects assistance not permitted by this Code or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

(C) *Diligence.* A lawyer shall act with reasonable diligence and promptness in representing a client.

(D) *Communication.*

(1) A lawyer shall keep a client reasonably informed about the status of a matter and comply promptly with reasonable requests for information. A lawyer shall notify the client promptly of all settlement offers, mediation evaluations, and proposed plea bargains.

(2) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(E) *Fees.*

(1) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. The factors to be considered in determining the reasonableness of a fee include the following:

- (a) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (b) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (c) the fee customarily charged in the locality for similar legal services;
- (d) the amount involved and the results obtained;
- (e) the time limitations imposed by the client or by the circumstances;
- (f) the nature and length of the professional relationship with the client;
- (g) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (h) whether the fee is fixed or contingent.

(2) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(3) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (4) below or by other law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined. Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination.

(4) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter.

- (5) A division of a fee between lawyers who are not in the same firm may be made only if:
- (a) the client is advised of and does not object to the participation of all lawyers involved; and
 - (b) the total fee is reasonable.

COMMENT: As to Section 2.304(E), consideration should be given as to whether this provision should apply to lay advocates or whether a modified version of this provision be enacted for lay advocates. Note: Pursuant to 2.303(F), the term lawyer is deemed to include lay advocates unless specifically indicated otherwise. Also, See Section 2.308(D).

(F) *Confidentiality of Information.*

(1) "Confidence" refers to information protected by the client-lawyer privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

- (2) Except when permitted under paragraph (3) below, a lawyer shall not knowingly:
- (a) reveal a confidence or secret of a client;

- (b) use a confidence or secret of a client to the disadvantage of the client; or
 - (c) use a confidence or secret of a client to the disadvantage of the lawyer or of a third person, unless the client consents after full disclosure.
- (3) A lawyer may reveal:
 - (a) confidences or secrets with the consent of the client or clients affected, but only after full disclosure to them;
 - (b) confidences or secrets when permitted or required by these rules, or when required by law or by court order;
 - (c) confidences and secrets to the extent reasonably necessary to rectify the consequences of a client's illegal or fraudulent act in the furtherance of which the lawyer's services have been used;
 - (d) the intention of a client to commit a crime and the information necessary to prevent the crime; and
 - (e) confidences or secrets necessary to establish or collect a fee, or to defend the lawyer or the lawyer's employees or associates against an accusation of wrongful conduct.
- (4) A lawyer shall exercise reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by Subparagraph (F) (3) above through an employee.
- (G) *Conflict of Interest: General Rule.*
 - (1) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - (a) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (b) each client consents after consultation.
 - (2) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest unless:
 - (a) the lawyer reasonably believes the representation will not be adversely affected; and
 - (b) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.
- (H) *Conflict of Interest: Prohibited Transactions.*
 - (1) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:
 - (a) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
 - (b) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (c) the client consents in writing thereto.
 - (2) A lawyer shall not use information relating to the representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted

or required by Subparagraph 2.304(F) or 2.306(C).

(3) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(4) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(5) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(a) a lawyer may advance court costs and expenses of litigation, the repayment of which shall ultimately be the responsibility of the client; and

(b) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(6) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(a) the client consents after consultation;

(b) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(c) information relating to representation of a client is protected as required by Subparagraph 2.304(F).

(7) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or, in a criminal case, an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all claims or pleas involved and of the participation of each person in the settlement.

(8) A lawyer shall not:

(a) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement; or

(b) settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(9) A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a representation directly adverse to a person whom the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(10) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(a) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(b) contract with a client for a reasonable contingent fee in a civil case, as permitted by Subparagraph 2.304(E)

(I) Conflict of Interest: Former Client.

(1) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client

consents after consultation.

(2) Unless the former client consents after consultation, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated has previously represented a client

(a) whose interests are materially adverse to that person, and

(b) about whom the lawyer had acquired information protected by Subparagraphs 2.304(F) and(I)(3).

(3) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(a) use information relating to the representation to the disadvantage of the former client except as Subparagraphs 2.304(F) or 2.306 (C) would permit or require with respect to a client, or when the information has become generally known; or

(b) reveal information relating to the representation except as Subparagraphs 2.304(F) or 2.306(C) would permit or require with respect to a client.

(J) *Imputed Disqualification: General Rule.*

(1) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Subparagraphs 2.304 (G), (H)(3), I(1) or (3), or 2.305(B).

(2) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, is disqualified under Subparagraph 2.304(I)(2), unless:

(a) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(b) written notice is promptly given to this Court to enable it to ascertain compliance with the provisions of this rule.

(3) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer, and not currently represented by the firm, unless:

(a) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client, and

(b) any lawyer remaining in the firm has information protected by Subparagraphs 2.304(F) and/or (I)(3) that is material to the matter.

(4) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Subparagraph 2.304(G).

(K) *Client Under a Disability.*

(1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority or mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(2) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

(L) *Safekeeping Property.*

(1) A lawyer shall hold property of clients or third persons that is in a lawyer's possession

in connection with a representation separate from the lawyer's own property. All funds of the client paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in an interest bearing account in one or more identifiable banks, savings and loan associations, or credit unions maintained in the State in which the law office is situated, and no funds belonging to the lawyer or the law firm shall be deposited therein except as provided in this rule. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(2) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(3) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(M) *Declining or Terminating Representation.*

(1) Except as stated in Subparagraph (M)(3) below, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (a) the representation will result in violation of this Code of Ethics or other law;
- (b) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (c) the lawyer is discharged.

(2) Except as stated in Subparagraph (M)(3) below, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

- (a) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (b) the client has used the lawyer's services to perpetrate a crime or fraud;
- (c) the client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
- (d) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (e) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
- (f) other good cause for withdrawal exists.

(3) When ordered to do so by this Court, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a lawyer should take reasonable steps to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment

of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by law.

2.305 *Counselor*. The following provisions shall apply when a lawyer serves in the role of counselor:

(A) *Advisor*. In representing a client, a lawyer shall exercise independent professional judgment and shall render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

(B) *Intermediary*.

(1) A lawyer may act as intermediary between clients if:

(a) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved and the effect on the client-lawyer privileges, and obtains each client's consent to the common representation;

(b) the lawyer reasonably believes that the matter can be resolved on terms compatible with the client's best interests, that each client will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful; and

(c) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(2) While acting as intermediary, the lawyer shall consult with each client concerning the decisions to be made and the considerations relevant in making them, so that each client can make adequately informed decisions.

(3) A lawyer shall withdraw as intermediary if any of the clients so requests, or if any of the conditions stated in Subparagraph (B) (2) above is no longer satisfied. Upon withdrawal, the lawyer shall not continue to represent any of the clients in the matter that was the subject of the intermediation.

(C) *Evaluation for Use by Third Persons*.

(1) A lawyer may, for the use of someone other than the client, undertake an evaluation of a matter affecting a client if:

(a) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(b) the client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is protected by Subparagraph 2.304(F) herein.

2.306 *Advocate*. The following provisions shall apply when a lawyer serves in the role of advocate:

(A) *Meritorious Claims and Contentions*. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous. A lawyer may offer a good-faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may so defend the proceeding as to require that every element of the case be established.

(B) *Expediting Litigation*. A lawyer shall make reasonable efforts to expedite litigation consistent

with the interests of the client.

(C) *Candor Toward the Tribunal.*

(1) A lawyer shall not knowingly:

- (a) make a false statement of material fact or law to this Court;
- (b) fail to disclose a material fact to this Court when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (c) fail to disclose to this Court controlling legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (d) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(2) The duties stated in subparagraph (C)(1) above continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Subparagraph 2.304(F).

(3) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(4) In an ex parte proceeding, a lawyer shall inform this Court of all material facts that are known to the lawyer and that will enable this Court to make an informed decision, whether or not the facts are adverse.

(D) *Fairness to Opposing Party and Counsel.* A lawyer shall not:

- (1) unlawfully obstruct another party's access to evidence; unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; or counsel or assist another person to do any such act;
- (2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (3) knowingly disobey an obligation under the rules of this Court except for an open refusal based on an assertion that no valid obligation exists;
- (4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party;
- (5) during trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or
- (6) request a person other than a client to refrain from voluntarily giving relevant information to another party, unless:
 - (a) the person is a relative or an employee or other agent of a client; and
 - (b) the lawyer reasonably believes that the person's interest will not be adversely affected by refraining from giving such information.

(E) *Impartiality and Decorum of the Tribunal.* A lawyer shall not:

- (1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;
- (2) communicate ex parte with such a person concerning a pending matter, except as permitted by law; or
- (3) engage in undignified or discourteous conduct toward the tribunal.

(F) *Trial Publicity.* A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have substantial likelihood of materially prejudicing an adjudicative proceeding.

(G) *Lawyer as Witness.*

(1) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(a) the testimony relates to an uncontested issue;

(b) the testimony relates to the nature and value of legal services rendered in the case; or

(c) disqualification of the lawyer would work substantial hardship on the client.

(2) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Subparagraphs 2.304(G) or (I).

(H) *Special Responsibilities of a Prosecutor.* The prosecutor in a criminal case shall:

(1) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(2) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining counsel and has been given reasonable opportunity to obtain counsel as permitted by the Indian Civil Rights Act [25 U.S.C. Section 1302];

(3) not seek to obtain from an unrepresented accused a waiver of important pretrial rights;

(4) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and, in connection with sentencing, disclose to the defense and to this Court all underprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of this Court; and

(5) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Subparagraph 2.306(F) or 2.306(I)(1).

COMMENT: The responsibility of a Tribal Prosecutor differs from that of the usual advocate as it is his or her duty to seek justice, not merely to convict. This special duty exists because:

a. The prosecutor represents the sovereignty of the tribe and therefore should use restraint in the discretionary exercises of governmental powers, such as in the selection of cases to prosecute;

b. During trial, the prosecutor is not only an advocate but he or she may also make decisions normally made by an individual client and those affecting the public interest should be fair to all; and

c. In the tribal system of criminal justice, a person charged is to be given the benefit of all reasonable doubts.

Consequently, with respect to evidence and witnesses, the prosecutor has responsibilities different from those of a lawyer in private practice.

(I) *Other Provisions Regarding a Prosecutor.* As a result of the special responsibilities of a prosecutor, the following provisions also apply to prosecutors:

(1) *Trial Publicity.* A tribal prosecutor participating in or associated with the investigation

of a criminal matter may not make or participate in making any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

- (a) Information contained in a public record;
- (b) That the investigation is in progress;
- (c) The general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim;
- (d) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or
- (e) A warning to the public of any dangers.

(2) *Moral Character and Public Behavior.*

- (a) Tribal prosecutors shall strive to attain and maintain moral character which is consistent with their tribal community responsibility.
- (b) Tribal prosecutors will have the responsibility in their daily conduct for acting so as to be as free as possible from actions which wrongfully harm others, which lack true compassion for others, or which are motivated by reasons not in the community interest. This is not meant to encourage tribal prosecutors to be judgmental of the conduct of other members of the community. Rather it is intended to remind them that their responsibility is for their behavior, for it is by their behavior, in Court and in the community, that tribal law enforcement will be judged by the tribal community.
- (c) Tribal prosecutors shall conduct themselves in public consistent with the belief that the Court is part of the community. They will respond to all inquiries concerning the Court in a friendly manner to ensure the development of knowledge in the community about the Court.

(3) *Restrictions.*

- (a) No tribal prosecutor may receive any fee or reward from or on behalf of any victim or other individual for services in any prosecution or business which it is the tribal prosecutor's official duty to attend.
- (b) No tribal prosecutor may be concerned as attorney or counsel for either party, other than the Tribe, in any civil action depending upon the same state of facts upon which any prosecution commenced but undetermined depends.
- (c) No tribal prosecutor while in office is eligible for or may hold any judicial office.
- (d) No person who acted as tribal prosecutor at the time of the citation issuance, arrest, or bringing of charges against any person by the Tribe may thereafter appear for or defend that person against the charges.

(4) *Refraining From Criticism.* Tribal prosecutors shall refrain from public and private criticism of other officers of the Court except as set out in these rules as being their responsibility. Tribal prosecutors shall not engage in discussions whose sole purpose or main thrust shall be the criticism of any officers of the Court, i.e., judges, lay advocates, attorneys, or law enforcement officers, in public or in private, except that constructive criticism designed to improve the performance of the individual may be given in a kind manner. Said constructive criticism should only be delivered in a forum conducive to the purpose of the constructive criticism.

(5) *Independent Decision-Making.* Tribal prosecutors have a duty to not be frightened or dissuaded from making difficult or unpopular decisions. Tribal prosecutors have a

responsibility to study the applicable law and facts of each case, making prosecutorial decisions based only on these factors. They must not be influenced in making these decisions by the fear of their being unpopular politically or from the threat of community or personal reprisal. They must not be influenced to react by threatening community or family anger. Their decisions should never be reactive to non-admissible influences, rather they should act based on their opinion as formed by the applicable facts and law of each case.

(6) *Political Activities.*

(a) The political activity of a tribal prosecutor shall be consistent with the support of the community's jurisdictional rights. Tribal prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting any political position except that the tribal community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard.

(b) This prohibition does not mean that tribal prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national or tribal level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the tribal community.

(7) *Avocational and Financial Activities.*

(a) *Avocational.* A tribal prosecutor may write, lecture, teach and speak on any subject, and engage in the arts, sports, and other social and recreational activities of the Tribe, if those activities do not interfere with the performance of his or her duties. A tribal prosecutor may participate on tribal committees and in any tribal educational, religious, charitable or similar organization.

(b) *Financial.*

(i) A tribal prosecutor shall avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her prosecutorial duties, exploit the prosecutor's position, or involve him or her in frequent transactions with lawyers and others likely to be involved in the opposing side in tribal court cases. The tribal prosecutor may, however, hold other employment or participate in the operation of a business.

(ii) Neither the tribal prosecutor nor any member of his or her family or household shall accept a gift, bequest, favor, or loan from anyone which would affect or appear to affect his or her impartiality in prosecutorial duties, or on the prosecutor's appearance of fairness.

(8) *Disqualification.* A tribal prosecutor shall disqualify himself or herself from acting as prosecutor in any proceeding in which his or her impartiality might reasonably be questioned, including instances where:

(a) The tribal prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(b) The tribal prosecutor served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the tribal prosecutor has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;

(c) The tribal prosecutor knows that he or she individually or a member of his or her

family or household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or

- (d) The tribal prosecutor, or a member of his or her family or household:
- (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer or lay advocate in the proceeding; or
 - (iii) is to the tribal prosecutor's knowledge likely to be a material witness in the proceeding.

(J) *Advocate in Nonadjudicative Proceedings.* A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Subparagraphs 2.306(C)(1) through (3), 2.306(D)(1) through (3), and 2.306 (E).

2.307 *Transactions with Persons Other Than Clients.* The following provisions shall apply when a lawyer has contact or communicates with persons other than a client:

(A) *Truthfulness in Statements to Others.* In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

(B) *Communication with a Person Represented by a Lawyer.* In representing a client, a lawyer shall not communicate about the subject of the representation with a party whom the lawyer knows to be represented in the matter by another lawyer, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

(C) *Dealing with an Unrepresented Person.* In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

(D) *Respect for Rights of Third Person.* In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

2.308 *Law Firms and Associations.* The following provisions shall apply to law firms and associations and all law partners or lawyers employed by said firms or associations:

(A) *Responsibilities of a Partner or Supervisory Lawyer.*

(1) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to this Code of Ethics.

(2) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to this Code of Ethics.

(3) A lawyer shall be responsible for another lawyer's violation of the rules contained in this Code if:

- (a) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or
- (b) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(B) *Responsibilities of a Subordinate Lawyer.*

(1) A lawyer is bound by this Code of Ethics notwithstanding that the lawyer acted at the

direction of another person.

(2) A subordinate lawyer does not violate the rules of this Code if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

(C) *Responsibilities Regarding Nonlawyer Assistants.* With respect to a nonlawyer employed by, retained by, or associated with a lawyer:

(1) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(2) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(3) a lawyer shall be responsible for conduct of such a person that would be a violation of this Code of Ethics if engaged in by a lawyer if:

(a) the lawyer orders or, with knowledge of the relevant facts and the specific conduct, ratifies the conduct involved; or

(b) the lawyer is a partner in the law firm in which the person is employed or has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(D) *Professional Independence of a Lawyer.*

(1) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(a) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate, or to one or more specified persons;

(b) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer the agreed-upon purchase price, and

(c) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement

(2) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(3) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(4) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(a) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(b) a nonlawyer is a corporate director or officer thereof; or

(c) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(E) *Unauthorized Practice of Law.* A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or
 - (2) assist a person which is not a member of a State bar in the performance of activity that constitutes the unauthorized practice of law, except lay advocates or those acting in pro per.
- (F) *Restrictions on Right to Practice.* A lawyer shall not participate in offering or making:
- (1) a partnership or employment agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
 - (2) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

2.309 *Public Service.* The following provisions shall apply to lawyers with regard to public service:

(A) *Pro Bono Publico Service.* A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means, or to public service or charitable groups or organizations. A lawyer may also discharge this responsibility by service in activities for improving tribal law, the tribal judicial system, or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

(B) *Accepting Appointments.* A lawyer shall not seek to avoid appointment by this Court to represent a person except for good cause, such as:

- (1) representing the client is likely to result in violation of this Code of Ethics or other tribal law;
- (2) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (3) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

(C) *Legal Services Organizations.* A lawyer may serve as a director, officer, or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

(D) *Law Reform Activities Affecting Client Interest.* A lawyer may serve as a director, officer, or member of an organization involved in reform of the law or administration of the law notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

2.310 *Information About Legal Services.* The following provision shall apply with regard to information about legal services:

(A) *Communications Concerning a Lawyer's Services.* A lawyer may, on the lawyer's own behalf, on behalf of a partner or associate, or on behalf of any other lawyer affiliated with the lawyer or the lawyer's firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

- (1) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;
- (2) be likely to create an unjustified expectation about results the lawyer can achieve, or

state or imply that the lawyer can achieve results by means that violate this Code of Ethics or other tribal law; or

(3) compare the lawyer's services with other lawyer's services, unless the comparison can be factually substantiated.

(B) *Advertising.*

(1) Subject to the provision of this Code, a lawyer may advertise.

(2) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.

(3) A lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or communication permitted by this Code.

(C) *Direct Contact with Prospective Clients.*

(1) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and nondeceptive letters to potential clients known to face particular legal problems" as elucidated in *Shapero v Kentucky Bar Ass'n*, 486 US 466; 108 S Ct 1016; 100 L Ed 2d 475 (1988).

(2) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by Subparagraph (C)(1) above, if:

(a) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(b) the solicitation involves coercion, duress or harassment.

(D) *Communication of Fields of Practice.* A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.

2.311 *Maintaining the Integrity of the Profession.*

(A) *Bar Admission and Disciplinary Matters.* An applicant for admission to any State or Tribal Bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(1) knowingly make a false statement of material fact, or

(2) fail to disclose a fact necessary to correct a misapprehension known to the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information protected by Subparagraph 2.304(F).

(B) *Judicial and Legal Officials.*

(1) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, adjudicative officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(2) A lawyer who is a candidate for judicial office shall comply with the applicable provision

of the Code of Tribal Judicial Conduct.

(C) *Reporting Professional Misconduct.*

(1) A lawyer having knowledge that another lawyer has committed a significant violation of this Code of Ethics that raises a substantial question as to that lawyer's honesty, trustworthiness, or fairness as a lawyer shall inform the Judicial Commission [See, Section 2.400 et seq].

(2) A lawyer having knowledge that a judge has committed a significant violation of the Code of Tribal Judicial Conduct that raises a substantial question as to the judge's honesty, trustworthiness or fairness for office shall inform the Judicial Commission [See, Section 2.400 et seq].

(3) This rule does not require disclosure of information otherwise protected by Subparagraph 2.304(F).

(D) *Misconduct.* It is professional misconduct for a lawyer to:

(1) violate or attempt to violate this Code of Ethics, knowingly assist or induce another to do so, or do so through the acts of another;

(2) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fairness as a lawyer;

(3) engage in conduct that is prejudicial to the administration of justice;

(4) state or imply an ability to influence improperly a government agency or official; or

(5) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Tribal Judicial Conduct or other law.

(E) *Jurisdiction* A lawyer admitted to practice in this tribal jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere. Also, a lawyer who is admitted to practice in another jurisdiction and who is practicing in this tribal jurisdiction is subject to the disciplinary authority of this jurisdiction.

2.312 *Short Title.* This Code shall be known and may be cited as the "Code of Ethics for Tribal Lawyers and Lay Advocates."

2.313 *Effective Date.* This Code becomes effective on July 10, 1998 (per Constitutional Ref.).

Section 2.400. Enforcement of Ethical Codes

2.401 *Definitions* When used in this Chapter, unless context otherwise indicates:

(A) "*Commission*" means the Judicial Commission.

(B) "*Complainant*" means the person who files the request for investigation.

(C) "*Investigation*" means fact-finding on alleged misconduct under the Judicial Commission Chairperson's direction.

(D) "*Judicial Commission*" means the remainder of the Tribal Judges as described in the Tribe's Constitution, Article VI section 5 (b).

(E) "*Judicial Commission Chairperson*" means the person so appointed pursuant to Section 2.403 (B) hereunder.

(F) "*Respondent*" means an attorney, lay advocate, judge, or other court personnel named in the request for investigation or complaint.

(G) "*Request for Investigation*" means the first step in bringing alleged misconduct to the attention of the Judicial Commission.

(H) "*Tribal Council*" means the Little River Band of Ottawa Indians Tribal Council.

2.402 *Enforcement Responsibility/Procedures/Relationship to Tribal Personnel Policies.*

(A) The Judicial Commission shall have the responsibility of enforcing the provisions of this Chapter, including the Code of Judicial Conduct; the Code of Conduct for Tribal Court Clerks, Magistrates, Administrators and other Court Personnel; and the Code of Ethics for Tribal Lawyers and Lay Advocates as set forth in this Chapter. Complaints shall not be received by or acted on by the Tribal Council except as an appeal pursuant to Section 2.407 herein, or as established in Article VI, section 5 (b) of the Tribal Constitution.

(B) Within ninety (90) days of their appointment, the Judicial Commission must develop and publish written rules and policies as to how it will operate and function.

(C) When a respondent is an employee of the Tribe, any hearing procedures within the Tribal Personnel Policies or Procedures will apply rather than any hearing procedures set forth within Section 2.400 of this Ethical Code. Similarly, these Codes of Ethics are supplemental to Tribal Personnel Policies where a respondent is a tribal employee and as such, any Tribal Personnel Policies or relevant Tribal Constitutional provisions shall control where there is any inconsistency between these Codes of Ethics and said Tribal Personnel Policies or relevant Tribal Constitutional Provisions.

2.403 *Investigation.*

(A) Whenever the Judicial Commission shall receive from a complainant information in writing indicating that a provision of Chapter 2 has been violated, the Commission shall conduct an investigation of the circumstances of the alleged violation. Such a request for investigation by a complainant of alleged misconduct must be in writing; describe the alleged misconduct, including the approximate time and place of it; be signed and dated by the complainant; and be filed with the Judicial Commission.

(B) Upon the filing of a request for investigation, a member of the Judicial Commission shall be appointed by said Commission to conduct and oversee the investigation and such person shall be known as the Judicial Commission Chairperson.

(C) Prior to commencement of the investigation, the Judicial Commission Chairperson must notify the respondent subject to being investigated and provide respondent with a copy of the written complaint.

(D) The Judicial Commission Chairperson may compel the respondent to answer questions, furnish documents and present any information deemed relevant to the investigation. Failure to do so on the part of the respondent is misconduct and grounds for discipline.

2.404 *Review and Action by Committee.*

(A) The Judicial Commission Chairperson shall report the result of each investigation to the Judicial Commission and make a recommendation for disposition of the matter.

(B) The Judicial Commission shall review the recommendation and determine whether to dismiss the matter or initiate a disciplinary action.

(C) If a complaint is dismissed, both the complainant and respondent shall be notified.

2.405 *Disciplinary Action - Procedure.*

(A) If the Judicial Commission determines to proceed with a disciplinary action, said Commission shall prepare a written notice of the allegations and serve the notice upon the respondent.

(B) The respondent shall be given twenty (20) days within which to answer the charges in writing and request a hearing.

(C) The hearing shall be held by the Commission within thirty (30) days of receipt of respondent's request.

(D) The hearing shall be conducted by the Judicial Commission under rules applicable to a trial of

a civil action in tribal court. The hearing shall be recorded and shall be open to the public.

(E) The Commission shall, at the conclusion of the hearing, determine on the evidence presented whether any provision of Chapter 2 has been violated by respondent.

2.406 *Disciplinary Action - Disposition.* If the Judicial Commission finds that a provision of Chapter 2 has been violated by respondent, it shall make one of the following dispositions, taking into account the severity of the offense and other factors the Judicial Commission deems relevant:

(A) Issue a reprimand;

(B) Suspend the respondent from his or her office or duties for a period of time;

(C) Revoke respondent's license or certificate to practice before this Court or terminate respondent from his or her office; exception, see Article VI, section 5(b) of the Tribal Constitution.

(D) Place respondent on probation for a specific period of time;

(E) Require respondent to make restitution in an appropriate amount (where applicable); or

(F) Admonishment respondent, only by consent of said respondent. Further, the Commission shall have the discretion to impose other disposition not referenced above where the respondent is incompetent or incapacitated.

2.407 *Appeal.* A respondent aggrieved by an action of the Judicial Commission may appeal in writing to the Tribal Council within fifteen (15) days of the Judicial Commission's action. The appeal shall be based on the record compiled at the Judicial Commission hearing. No new evidence shall be heard. The decision of the Tribal Council shall be final.

2.408 *Confidentiality.*

(A) All papers, files and communications in an investigation and proceedings before the Judicial Commission prior to the decision to proceed with a disciplinary action are confidential.

(B) After service of a written notice on respondent under Section 2.405 (A), the proceedings and all papers filed are public.

2.409 *Short Title.* This Code shall be known and may be cited as the "Code of Enforcement of Ethical Conduct."

2.410 *Effective Date.* This Code becomes effective on July 10, 1998 (per Constitutional Ref.).

Chapter 3 Admission to Practice

Section 3.000. Purpose and Definitions

3.001 *Purpose.* The purpose of this Chapter is to provide standards relating to the admission to practice before this Court. The Court has a legitimate interest in protecting prospective parties and in the quality of justice within the tribal system. Consequently, the Court, by these rules, imposes requirements relative to these interests on anyone seeking to represent clients/parties in this Court.

3.002 *Definitions.* When used in this Chapter, unless the context otherwise indicates:

(A) "*Attorney*" means an individual who is a current member of the State Bar of Michigan or some other State. The term "attorney" is synonymous with the term "lawyer." Further, a lawyer must be admitted to practice before this Court pursuant to Chapter 3 herein.

(B) "*Court*" means the Tribal Court of the Little River Band of Ottawa Indians.

(C) "*Lawyer*" means an individual who is a current member of the State Bar of Michigan or some other State. The term "lawyer" shall be synonymous with the term "attorney."

(D) "*Lay Advocate*" means a person who is a non-lawyer and who has been qualified by the Court to serve as an Advocate on behalf of a party.

Section 3.100. Right to Legal Representation

3.101 *Representation by Attorney.* Any party to a civil or criminal action shall have the right to be represented by an attorney of his/her own choice and at his/her own expense pursuant to the Admission Procedures set forth herein.

3.102 *Representation by Lay Advocate.* Any party to a civil or criminal action shall have the right to be represented by a lay advocate of his/her own choice and at his/her own expense pursuant to the Admission Procedures set forth herein.

3.103 *Standards of Conduct and Obligations for Attorneys and Lay Advocates.* Every attorney and lay advocate admitted to practice before this Court, and every attorney or lay advocate employed or appointed to represent another by this Court, shall conform his/her conduct in every respect to the requirements of the Code Ethics for Tribal Lawyers and Lay Advocates [See, Section 2.300 et seq] as well as the Code of Ethics or Professional Responsibility for the State in which said lawyer is currently licensed or authorized to practice law. Further, every attorney and lay advocate, who has been admitted to practice before this Court, shall be deemed officers of the Court for purposes of their representation of a party and shall be subjected to the disciplinary and enforcement provisions of the Code of Ethics for Tribal Lawyers and Lay Advocates [See, Section 2.400 et seq].

Section 3.200. Lawyers

3.201 *Practice Before Tribal Court.* A lawyer may represent any person in an action before this Court upon being duly admitted in accordance with Section 3.202 herein.

3.202 *Admission Procedure.* A lawyer as defined in Section 3.002, above, who desires to practice before this Court shall submit to the Court:

(A) An Application for Admission to Practice (as provided by the Court) accompanied by a Certificate of Good Standing or other appropriate documentation from the State Bar or Supreme Court of the State in which such lawyer is duly licensed to practice law; and further, such application must be signed and dated by the lawyer applicant in the presence of a Notary Public;

(B) A Certification that s/he shall conform to the Code of Ethics for Lawyers and Lay Advocates [See, Sections 2.300 and 2.400 et seq] as well as the Code of Ethics or Professional Responsibility for the State in which said lawyer is currently licensed as s/he performs his/her duties as a lawyer before this Court;

(C) A sworn Oath of Admission (as provided by the Court), which must be signed and dated by the lawyer applicant in the presence of a Notary Public; and

(D) An application fee for admission in the amount of Thirty-Five (\$35.00) Dollars.

3.203 *Approval or Disapproval of Application for Admission to Practice.*

(A) Upon the filing of the required documents and fee, the Court shall approve the Application for Admission to Practice provided said lawyer has complied with the admission procedures set forth in Section 3.202 above. If so approved, the lawyer's name shall be entered on the roster of lawyers admitted to practice before this Court and shall be provided with a Certificate of Admission to Practice from this Court.

(B) An applicant for Admission to Practice shall respond to any additional requests for information or documentation from this Court within twenty (20) days of the date of said request.

(C) An applicant who was denied Admission to Practice shall receive written notice of the basis for the denial and the applicant may then submit a response within twenty (20) days of the date of said notice. The Court will then review the application materials, the basis for denial, and the applicant's response, and then notify the applicant in writing of the subsequent decision. Also, in the Court's

discretion, a hearing may be held to elicit testimony bearing on the basis for the denial prior to making such decision. There is no further appeal in the Admission Procedure.

(D) A disapproval for Admission to Practice may include, but are not limited to, the following:

1. Failure to meet the Admission requirements set forth herein;
2. Refusal to furnish available information or answer questions relating to the applicant's qualifications for Admission to Practice;
3. Knowingly making a false statement of a material fact or failure to disclose a fact necessary to correct a misapprehension or misrepresentation in connection with his/her application; or
4. Is subject to disciplinary action as an attorney in the jurisdiction for the State in which the attorney is so licensed.

3.204 *Annual renewal to Practice.* Once admitted to practice before this Court, a lawyer may continue to practice before the Court each year thereafter provided said lawyer certifies that s/he continues to be a lawyer in good standing from his/her respective State Bar and submits an annual membership fee of Fifteen (\$15) Dollars.

Section 3.300. Lay Advocates

3.301 *Practice Before Tribal Court.* A lay advocate may represent any person in an action before this Court upon being duly admitted in accordance with Section 3.302 herein.

3.302 *Admission Procedures.* A lay advocate, as defined in Section 3.002, who desires to practice before this Court shall submit to the Court:

(A) An application for Admission to Practice (as provided by the Court), which shall be signed and dated by the lay advocate applicant in the presence of a Notary Public; and further, said application shall provide information with regard to the following criteria for admission and/or append appropriate documentation which shows that said applicant:

1. Is at least Twenty-One (21) years of age;
2. Possesses at least a high school diploma or GED Certificate;
3. Possesses good communication skills, both written and verbal and has the ability to express his/her position clearly and concisely;
4. Has legal or law-related education and/or training;
5. Has legal or law-related work experience including but not limited to experience and practice before Tribal Courts;
6. Knows and understands tribal traditions and customs;
7. Has the knowledge and understanding of the Tribal Constitution, Tribal Code (Law and Order Code and/or Ordinances), Tribal Court Rules and Procedures, Evidentiary Rules, Tribal Codes of Ethics, and the Indian Civil Rights Act;
8. Knows and understands Tribal Court jurisdiction and the history, structure and function of the Tribal Court;
9. Has the ability to perform legal research and use the law library;
10. Possesses good character and moral fitness to represent clients, including supporting affidavits from at least two people familiar with the applicant's integrity, honesty, moral character, judgment, courtesy and self-reliance as well as providing background information and permission to contact other references in the Court's discretion.

(B) Certification that s/he shall conform to the Code of Ethics for Tribal Lawyers and Lay Advocates [See, Sections 2.300 and 2.400 et seq] as well as any Code of Ethics or Professional

Responsibility for the State in which said Lay Advocate may be currently licensed as s/he performs his/her duties as a Lay Advocate before this Court;

(C) A sworn Oath of Admission (as provided by the Court), which must be signed and dated by the lay advocate applicant in the presence of a Notary Public; and

(D) An application fee for admission in the amount of Thirty-Five (\$35.00) Dollars.

3.303 *Approval or Disapproval of Application for Admission to Practice.*

(A) Upon the filing of the required documents and fee, the Court shall approve the Application for Admission to Practice provided said lay advocate has complied with the admission procedures set forth in Section 3.302 above. If so approved, the Lay Advocate's name shall be entered on the roster of Lay Advocates admitted to practice before this Court and shall be provided with a Certificate of Admission to Practice from this Court.

(B) An applicant for Admission to Practice shall respond to any additional requests for information or documentation from this Court within Twenty (20) days of the date of said request.

(C) An applicant who was denied Admission to Practice shall receive written notice of the basis for the denial and the applicant may then submit a response within Twenty (20) days of the date of said notice. The Court will then review the application materials, the basis for denial, and the applicant's response, and then notify the applicant in writing of the subsequent decision. Also, in the Court's discretion, a hearing may be held to elicit testimony bearing on the basis for the denial prior to making such decision. There is no further appeal in the Admission Procedure.

(D) The reasons for disapproval of an application for Admission to Practice may include, but are not limited to, the following:

1. Failure to meet the Admission requirements set forth herein;
2. Refusal to furnish available information or answer questions relating to the applicant's qualifications for Admission to Practice;
3. Knowingly making a false statement of a material fact or failure to disclose a fact necessary to correct a misapprehension or misrepresentation in connection with his/her application; or
4. Is subject to disciplinary action as an attorney or lay advocate in the jurisdiction or the State in which the lay advocate is so licensed or is authorized to practice as a lay advocate.

3.304 *Annual Renewal to Practice.* Once admitted to practice before this Court, a lay advocate may continue to practice before the Court each year thereafter provided said lay advocate certifies s/he continues to meet the criteria for admissions set forth herein (Section 3.302) and submits an annual membership fee of Fifteen (\$15) Dollars.

Section 3.400. Short Title

3.401 *Short Title.* This Code shall be known and may be cited as the "Code of Admission to Practice in Tribal Court."

3.500. Effective Date

3.501 *Effective Date.* This Act becomes effective on July 10, 1998 (Constitutional Ref.).

Chapter 4 Rules of Evidence

Section 4.000. General Provisions

4.001 *Scope.* These rules shall apply to all proceedings in the Tribal Court and the Court of Appeals, except

as limited by Rule 4.003.

4.002 *Construction.* These rules shall be interpreted in order to secure fairness in the administration of justice, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to enhance the ascertainment of truth and the just determination of proceedings.

4.003 *Proceedings in which Application Limited.* These Rules (other than with respect to privileges) do not apply in the following situations:

(A) *Preliminary Questions.* The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the Court under Rule 4.006.

(B) *Certain Proceedings.* Proceedings for extradition; preliminary examinations in criminal cases; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses and search warrants; proceedings with respect to release on bail or bond; and emergency orders related to the protection of minors.

4.004 *Applicability of Rules of Evidence of other Jurisdictions.* In the absence of a specific rule of evidence, or in support of an interpretation of these Rules, the Tribal Court may cite as persuasive the Federal Rules of Evidence or the Michigan Rules of Evidence.

4.005 *Review of Evidentiary Matters.* No evidentiary question is subject to appellate review unless a substantial right of a party is affected and:

(A) *Erroneous Ruling.* An appeal shall not be based upon a ruling of the Tribal Court which admits or excludes evidence unless the appellant raised such an objection to the admission or exclusion of the evidence on the record in a timely manner.

(B) *Plain Error.* Nothing in this Rule precludes the Court of Appeals from taking notice of plain errors affecting substantial rights although they were not brought to the attention of the Tribal Court.

4.006 *Preliminary Questions.* Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the Tribal Court.

4.007 *Remainder of or Related Writings or Recorded Statements.* When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Section 4.100. Judicial Notice

4.101 *Adjudicative Facts.* The Tribal Court may take notice of a fact at any time which is not subject to reasonable dispute, in that such fact is either generally known within the territorial jurisdiction of the court or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

4.102 *Law.* The Tribal Court may take judicial notice of the law of any jurisdiction which is properly authenticated.

Section 4.200. Relevant Evidence

4.201 *Relevant Evidence Defined.* "Relevant evidence" means evidence having any tendency to make the existence of any fact of consequence to the determination of the proceeding more probable or less probable than it would be without the evidence.

4.202 *Admissibility.* All relevant evidence is admissible, unless as otherwise provided by these Rules. Evidence which is not relevant is inadmissible.

4.203 *General Grounds for Exclusion of Relevant Evidence.* Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the

issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

4.204 *Admissibility of Character Evidence.* Evidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except under one of the following situations:

(A) *Character of Accused.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(B) *Character of Victim.* Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same.

(C) *Character of Witness.* Evidence of the character of a witness, as provided in Rules

4.205 *Admissibility of Other Crimes.* Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted similarly at the time at issue. Such evidence may be admissible if it is used as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence that the prosecution intends to introduce at trial.

4.206 *Admissible Methods of Proving Character.* In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made:

(A) *Reputation or opinion.* Testimony as to the person's reputation or testimony in the form of an opinion may be admitted.

(B) *Instances of conduct.* Testimony as to specific instances of a person's conduct may be made only:

(1) When character or a trait of character of a person is an essential element of a charge, claim, or defense; or

(2) On cross-examination, concerning testimony of reputation or opinion, inquiry is allowed into relevant specific instances of conduct.

4.207 *Admissible Evidence of Habit and Routine Practice.* Evidence of the habit of a person or the routine practice of an organization, whether or not corroborated and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

4.208 *Specific Grounds for Exclusion of Relevant Evidence.* Although relevant, evidence of the following kinds are excluded:

(A) *Subsequent remedial measure.* Any measure taken after an event which, if taken previously, would have made the event less likely to occur, is not admissible to prove negligence or culpability for the event.

(B) *Settlement.* Any offer of settlement, and any statement made by any party in negotiating a possible settlement, is inadmissible to prove liability for or invalidity of a claim or its amount.

(C) *Expense payment.* Payment, or offers or promises to pay medical, hospital, or disability expenses are inadmissible to prove liability for the injury.

(D) *Pleas and plea discussions.* Evidence of a plea of nolo contendere, or of a guilty plea withdrawn by the then defendant, or of statements made by defendant during plea negotiations is inadmissible against the defendant in any other proceeding.

(E) *Sex offense victim's past behavior.* Reputation or opinion evidence of the past sexual behavior of a victim of a sexual offense is not admissible.

Section 4.300. Privileges

4.301 *General Rule.* Unless exempted under this Section, the United States Constitution, the Indian Civil Rights Act, or other law of the Tribe, no person may refuse to provide evidence in any proceeding in the Tribal Court. The exemption provided in this Section concerns only privileged communication.

4.302 *Definition of Privileged Communication.* A privileged communication is one not intended to be disclosed to anyone other than except the person to whom it was made, and which is made to the person receiving it due to a special relationship, termed a privilege in this Rule, with the communicator.

4.303 *Privileged Relationships.* The following relationships are recognized as based on the protection of confidentiality in connection with their undertaking, and communications made in confidence are protected from involuntary disclosure:

(A) *Attorney-client.* A client has a privilege to refuse to disclose and to prevent any other person from disclosing any confidential communication between the attorney or advocate and the client, made for the purpose of obtaining legal assistance.

(B) *Health provider-patient.* A patient has a privilege to refuse to disclose and to prevent any other person from disclosing any confidential communication between him/her and a physician, nurse, psychologist, psychiatric social worker, or mental health counselor, made for the purpose of obtaining diagnosis and/or treatment of the patient's physical or mental condition.

(C) *Husband-wife.* A person has a privilege to refuse to disclose and to prevent he/she spouse from disclosing any confidential communication made during the marriage.

(D) *Priest-penitent.* A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication made to the person's spiritual advisor, made for the purpose of obtaining spiritual advice or absolution.

4.304 *Exceptions to Claim of Privilege.* A claim of privilege will not prevent disclosure of confidential communication under the following circumstances:

(A) *Attorney-client.* A confidential communication to a legal counselor:

- (1) Was used to commit or plan a crime; or
- (2) Was made to the legal counselor during representation of joint clients which is now an issue between the two or more clients; or
- (3) Is relevant to a claim by the client against the attorney or by the attorney against the client.

(B) *Health provider-patient.* A confidential communication to a health care provider:

- (1) Is part of the record of examination of the patient ordered by the Court; or
- (2) Was generated by the provider's examination of a physically or emotionally abused or injured child, and is part of the provider's conclusion that the child's condition was caused by non-accidental means, or was inflicted by another; or
- (3) Is relevant in a proceeding in which the patient's physical or mental health is an element of the patient's claim or defense.

(C) *Husband-wife.* No claim of privilege can be raised in a proceeding in which the spouses are adverse parties. A spouse may disclose statements made in matters involving children of the parties or criminal matters.

4.305 *Procedure and Effect of Privilege Claim.*

(A) *Who may claim.* A privilege under this Section may be asserted by the person making the confidential communication or by the person to whom it was made.

(B) *Who may waive.* Any person who made a privileged communication may waive the privilege by so testifying in open court.

(C) *Effect of claim.* No inference may be drawn from a person's assertion of a privilege.

Section 4.400. Witnesses

4.401 *Oath or Affirmation.* Before giving any testimony, a witness shall be required to declare that he/she will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

4.402 *Interpreters.* An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

4.403 *Competency of Judge as Witness.* The judge presiding at the trial may not testify in that trial as a witness.

4.404 *Competency of Juror as Witness.* A juror sitting in a trial may not testify in that trial as a witness, except that a juror may be questioned by the judge as part of an inquiry into the validity of a verdict as to the existence of extraneous prejudicial information improperly brought to the jury's attention or the existence of any outside influence improperly brought to bear upon any juror.

4.405 *Competency to Testify.* Every person is competent to testify to the extent that the witness is of sufficient mental capacity and understanding to testify under the duty to be truthful.

4.406 *Personal Knowledge by Witness Required.* A witness may testify only to those matters of which he/she has personal knowledge.

4.407 *Opinion Testimony of Lay Witness.* Any person whose testimony is not qualified as expert shall not be competent to provide any opinion except one which is:

(A) Rationally based on the perception of the witness; or

(B) Helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

4.408 *Opinion Testimony of Expert Witness.* If specialized knowledge will assist the trier of fact to understand the evidence or determine an issue of fact, a witness who is qualified by knowledge, skill, experience, training or education as an expert may testify in the form of an opinion or inference.

4.409 *Bases for Expert Opinion.* The facts or data in a particular case on which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing in which the expert testifies. These underlying facts and data need not be admissible into evidence, if they are of a type reasonably relied upon by experts in the particular field of the witness.

4.410 *Disclosure of Facts Underlying Expert Opinion.* An expert witness may testify in terms of opinion or inference without prior disclosure of the underlying facts or data, unless required otherwise by the presiding judge. The expert may, in any event, be required to disclose the underlying facts or data on cross-examination.

4.411 *Expert Opinion on Mental State or Condition Limited.* An expert witness testifying about the mental state or condition of a defendant in a criminal case shall not state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charge or a defense to that charge.

4.412 *Form for Questioning Witnesses.* Evidence shall only be presented through witness testimony, subject to the following:

(A) *Court control.* The Tribal Court shall exercise reasonable control over the mode and order of questioning witnesses and presenting evidence to avoid needless time consumption and to protect witnesses from harassment or undue embarrassment.

(B) *Scope of cross-examination.* Cross-examination may extend to all matters relevant to the case, including the credibility of the witness.

(C) *Leading questions.* Leading questions may be used in direct and cross-examination to the extent necessary to develop the testimony of the witness and to the extent the Tribal Court permits under subsection 4.412(A).

(D) *Calling and questioning by the Court.* The Tribal Court may call witnesses, and all parties are entitled to cross-examine any such witness. The Court may also question any witness called by any party in the case.

4.413 *Exclusion of Witnesses.* At the request of a party, or on its own motion, the Tribal Court shall order witnesses excluded from the courtroom so that they cannot hear the testimony of other witnesses. In order to prevent potential tainting of witness testimony, the Tribal Court may, in addition, order the witnesses to refrain from discussing the proceedings among themselves and, if necessary, that they remain separate from each other during the proceeding.

Section 4.500. Impeachment of Witnesses

4.501 *Impeachment Defined.* Impeachment is the action of a party in challenged the credibility of a witness, including the witness's veracity and the accuracy of the testimony so given.

4.502 *Evidence of Character.* A witness's credibility may be attacked by evidence in the form of opinion or reputation regarding the witness's character for untruthfulness, and if so attacked, may be supported through evidence of reputation or opinion regarding truthfulness.

4.503 *Evidence of Conviction of Crime.* A witness's credibility may be attacked by evidence that a witness other than an accused has been convicted of a crime within the last 10 years.

4.504 *Evidence of Religious Belief or Opinion.* Evidence of a witness's beliefs or opinions on matters of religion is not admissible for the purpose of showing that by reason of their nature, the witness's credibility is impaired or enhanced.

4.505 *Prior Statements of Witness.* Evidence of a prior inconsistent statement by a witness is not admissible unless the witness is provided an opportunity to explain or deny the same and the opposite party is provided an opportunity to question the witness about it.

Section 4.600. Writings

4.601 *Writing Used to Refresh Memory.* If a witness uses a writing to refresh memory for the purpose of testifying, whether prior to or during his/her testimony, the adverse party is entitled to review the writing at the conclusion of the witness's testimony and to cross-examine the witness about the writing, including introducing into evidence those portions of the writing which relate to the subject matter of the testimony.

4.602 *Non-Production of Writing Used by Witness.* If a claim is made that a writing used by a witness to refresh memory cannot be made available to an adverse party, the judge shall examine the writing in chambers and shall order the disclosure of all portions of the writing relating to the subject of the witness's testimony. If a writing is not produced as ordered, the judge shall make any order which justice may require, including the expungement of all testimony of the witness.

4.603 *Original Writings, Recordings, and Photographs.* In order to prove the content of a writing, recording or photograph, the original of the object is required, except as provided in these Rules.

4.604 *Use of Duplicate.* A duplicate is admissible to the same extent as the original unless:

(A) A genuine issue is raised as to the authenticity of the original, or

(B) Under the circumstances, it would be unfair to admit the duplicate in place of the original.

4.605 *Admissibility of Other Evidence of Content.* An original of an object sought to be introduced is not required if the offering party demonstrates one of the following circumstances exist:

(A) *Original lost or destroyed.* All originals are lost or have been destroyed, unless the offering

party lost or destroyed them in bad faith;

(B) *Original not obtainable.* No original can be obtained by any available judicial process or procedure;

(C) *Original in possession of opponent.* The original is, or was in the possession of the party against whom the object is offered and that party does not produce the original at the hearing; or

(D) *Collateral matter.* The writing, recording or photograph is not closely related to a controlling issue of the proceeding.

4.606 *Summaries.* The contents of voluminous writings, recordings or photographs which cannot be conveniently examined in court may be presented in the form of a chart, summary or calculation. The originals, or duplicates, shall be made available for examination or copying by other parties at a reasonable time and place. The judge may order that the originals or duplicates be produced in court.

4.607 *Testimony or Written Admission of Party.* Contents of writings, recordings or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the non-production of the original.

Section 4.700. Hearsay

4.701 *Definitions.* In considering proposed evidence, the judge will utilize the following definitions:

(A) *Statement.* A "statement" is an oral or written assertion, or nonverbal conduct of a person if it is intended by the person as an assertion.

(B) *Declarant.* A "declarant" is a person who makes a statement.

(C) *Hearsay.* "Hearsay" is a statement, other than one made by the declarant while testifying at the hearing, offered in evidence to prove the truth of the matter asserted.

4.702 *Statements Not Hearsay.* The following statements are not hearsay:

(A) *Prior statement by witness.* The declarant testifies at the hearing and is subject to cross-examination concerning the statement, and the statement is:

(1) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a hearing or deposition, or

(2) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or

(3) one of identification of a person made after perceiving the person; and

(B) *Admission by party-opponent.* The statement is offered against a party and is:

(1) the party's own statement in either an individual or representative capacity, or

(2) a statement of which the party has manifested his/her adoption or belief in its truth, or

(3) a statement by a person authorized by the party to make a statement concerning the subject, or

(4) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or

(5) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

4.703 *Hearsay Rule.* Hearsay is not admissible as evidence, except as provided in these Rules.

4.704 *General Exceptions to Hearsay Rule.* A claim of hearsay shall not prevent evidence of any of the following from being admissible:

(A) *Present sense impression.* A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(B) *Excited utterance.* A statement relating to a startling event or condition made while the

declarant was under the stress of excitement caused by the event or condition.

(C) *Then existing mental, emotional, or physical condition.* A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification or terms of declarant's will.

(D) *Statements for purpose of medical diagnosis.* Statements made for purposes of medical diagnosis or treatment and describing medical history or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

(E) *Recorded recollection.* A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory, and to reflect that knowledge correctly.

(F) *Records of regularly conducted activity.* A memorandum, report, record or data compilation in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by or from information transmitted by a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make such record, as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" includes any entity, whether or not conducted for profit.

(G) *Public records and reports.* Records, reports, statements or data compilations, in any form, of public offices or agencies which set forth:

- (1) the activities of the office or agency, or
- (2) matters observed pursuant to duty imposed by law as to which there was a duty to report, excluding in criminal cases matters observed by law enforcement personnel, or
- (3) in civil cases and against the Tribe in criminal cases, actual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(H) *Records of vital statistics.* Records or data compilations in any form of births, deaths, fetal deaths, or marriages, if the reporting thereof was made to a public office pursuant to requirements of law.

(I) *Records of religious organizations.* Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(J) *Family records.* Statement of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, or similar family records.

(K) *Marriage, baptismal and similar certificates.* Statements of fact contained in a certificate that the maker performed a marriage or other ceremony made by a clergyman, public official or other person authorized under tribal law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(L) *Records of documents affecting an interest in property.* The record of a document purporting to establish or affect an interest in property, and a statement contained therein, as proof of the content of the original recorded document and its execution and delivery by each person by

whom it purports to have been executed, if the record is that of a public office and an applicable law authorizes the recording of documents of that kind in that office.

(M) *Statements in ancient documents.* Statements in a document in existence twenty (20) years or more, when the authenticity of the document is established by testimony.

(N) *Market reports and commercial publications.* Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(O) *Learned treatises.* To the extent called to the attention of an expert witness during cross-examination or relied upon by an expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of science or art, established as a reliable authority by testimony or admission of the witness, by other expert testimony, or by judicial notice.

(P) *Reputation.* Reputation under any of the following circumstances:

(1) *Personal history.* Reputation among members of a person's family or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship, or other similar fact of personal or family history, or

(2) *Boundaries.* Reputation in a community, existing before the controversy, as to boundaries of or customs affecting lands in the community, or

(3) *Community history.* Reputation as to events of general history important to the community or state or nation in which located, or

(4) *Character.* Reputation of a person's character among associates or in the community.

(Q) *Judgment of Previous Conviction.* Evidence of a final judgment, entered after a plea or verdict of guilty (but not after a plea of nolo contendere) finding the person guilty of a crime, to prove any fact essential to maintain the judgment, but not including in a criminal case judgments against persons other than the accused, unless offered for purposes of impeachment.

(R) *Deposition Testimony of an Expert.* Testimony given as a witness in a deposition in the same proceeding, if the judge finds that the deponent is an expert witness and is not a party to the proceeding.

4.705 *Hearsay Exception for Child's Statement about Sexual Act.* A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is not inadmissible as hearsay to the extent that it corroborates testimony given by the declarant during the same proceeding, and prior notice to the adverse party of the content of the statement is given sufficiently in advance to enable the statement to be answered, provided:

(A) The declarant was under the age of 10 when the statement was made;

(B) The statement is shown to have been spontaneous and without indication of manufacture;

(C) The declarant made the statement immediately after the incident, or any delay is excusable as having been caused by fear or other equally effective circumstance; and

(D) The statement is introduced through the testimony of someone other than the declarant.

4.706 *Hearsay Exceptions for Unavailable Declarant.*

(A) *Definition of Unavailability.* "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by the judge from testifying on the subject matter of the declarant's statement on grounds of privilege; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the judge to do so; or

(3) testifies to a lack of memory of the subject matter of declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the statement has been unable, using due diligence, to procure the declarant's attendance by process or other reasonable means.

(B) *Unavailability Claim Inapplicable.* A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

(C) *Hearsay Exceptions for Unavailable Witness.* The following are not excluded from admission by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony given as a witness at another hearing or in a deposition, if the party against whom the testimony is now offered or, in a civil action, a predecessor in interest, had an opportunity to develop the testimony by direct, cross, or redirect examination.

(2) *Statement under belief of impending death.* A statement made by the declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) *Statement against interest.* A statement which was at the time made so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.* A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated.

(5) *Deposition testimony.* Testimony given as a witness in a deposition, if the party or a predecessor interest against whom the testimony is now offered, had an opportunity and similar motive to develop the testimony by direct, cross or redirect examination.

4.707 *Hearsay Exceptions at Judge's Discretion.* A statement not specifically covered by any of the foregoing exceptions but having an equivalent circumstantial guarantee of trustworthiness may be admitted at the discretion of the judge.

4.708 *Attacking and Supporting Credibility of Declarant.* When a hearsay statement or an admission as defined in sec. 4.702(B) has been admitted into evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness.

Section 4.800. Authentication and Identification

4.801 *Admission of Evidence Dependent on Authentication.* No writing, photograph, or other form of physical evidence may be admitted without evidence which supports a finding that the matter in question is what its proponent claims it to be.

4.802 *Self-Authentication.* Extrinsic evidence of authenticity is not required for any of the following matters to be admitted:

(A) *Public Documents under Seal.* A document bearing a seal purporting to be that of a federally recognized Indian tribe, or of the United States, or of any state, district, commonwealth, territory, or

insular possession thereof, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(B) *Public Documents Not under Seal.* A document purporting to bear the signature in the official capacity of an officer or employee of any entity described in subsection. (A) which has no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(C) *Public Documents of Foreign Nation or Tribe.* A document purporting to be executed or attested in an official capacity by a person authorized under the laws of a foreign country or of an Indian tribe recognized by the Government of Canada to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position of either the executing or attesting person, or of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution and attestation. If reasonable opportunity has been provided to all parties to review the authenticity and accuracy of official documents, the judge may order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(D) *Certified Copies of Public Records.* A copy of an official record or report or entry therein, or of a document authorized by law to be filed or recorded and actually so filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification which complies with subsec. (A), (B), or (C).

(E) *Official Publications.* Books, pamphlets, or other publications purporting to be issued by a public authority.

(F) *Newspapers and Periodicals.* Printed materials purporting to be newspapers or periodicals.

(G) *Trade Inscriptions and Labels.* Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(H) *Acknowledged Documents.* Documents accompanied by a certificate of acknowledgment executed in the manner provided by law or by a notary public or other officer authorized by law to make acknowledgments.

(I) *Commercial Paper and Related Documents.* Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(J) *Presumptions Created by Law.* Any signature, document, or other matter declared by the laws of the United States, the State of Michigan, or the Tribe to be presumptively or prima facie genuine or authentic.

4.803 *Subscribing Witness Testimony Not Required.* The testimony of a subscribing witness is not necessary to authenticate a writing that is otherwise admissible.

4.900. Short Title & Effective Date

4.901 *Short Title.* These Rules shall be known and may be cited as the “Rules of Evidence.”

4.902 *Effective Date.* These Rules becomes effective on _____. As adopted by the Judiciary of the Little River Band of Ottawa Indians Court.

Chapter 5. Appellate Procedure

Section 5.000. Purpose and Definitions

5.001 *Purpose.* The purpose of this Chapter is to establish the procedures by which appeals are taken from decisions of the Tribal Court.

5.002 *Definitions.* The following terms shall have the following meanings:

- (A) "*Appellant*" means the party filing the appeal.
- (B) "*Respondent*" means the party responding to the appeal.
- (C) "*Tribal Court*" means the trial level court of the Tribe.
- (D) "*Tribal Court of Appeals*" means the appellate level court of the Tribe.
- (E) "*Justice*" means a judge appointed to the Court of Appeals.
- (F) "*Tribe*" means the Little River Band of Ottawa Indians.

Section 5.100. Organization and Composition of the Tribal Court of Appeals

5.101 *Judges of the Tribal Court of Appeals.* The Tribal Court of Appeals shall consist of three Justices appointed according to the Tribal Constitution, Article VI, Section 3.

5.102 *Term.* The terms of office for each Justice shall be consistent with the Tribe's Constitution, Article VI, Section 5.

5.103 *Chief Justice.* The Tribal Court of Appeals Justices shall select one of their members to serve as Chief Justice for a term of two years. The Chief Justice shall be responsible for the administration of the Tribal Appellate Court and shall perform duties specified by Court Rules.

5.104 *Court Clerk.* The Clerk of the Tribal Court shall have duties of Clerk for the Tribal Court of Appeals.

5.105 *Disqualification of an Appellate Justice.* A Justice shall disqualify him/herself, upon the Justice's own motion or that of a party, from sitting on the appeal of any case in which:

- (A) *Direct Interest.* The Justice has a direct interest, other than an interest held in common by all Tribal members, in the outcome;
- (B) *Witness.* The Justice was a witness at trial; or
- (C) *Related.* The Justice has any kind of relationship, or is so related to either the Appellant or Respondent, as to bring into question the Justice's ability to render an impartial decision.

Section 5.200. Jurisdiction of the Tribal Court of Appeals

5.201 *Exclusive Jurisdiction.* The Court of Appeals shall have exclusive jurisdiction to review the decisions of the Tribal Court according to these Rules.

5.202 *Issues of Constitutionality.* The jurisdiction of the Court of Appeals shall include the authority to hear appeals regarding the constitutionality of any governmental action/inaction.

5.203 *Who May Appeal.*

- (A) *Civil Cases.* Any participant significantly and adversely affected by a decision of the Tribal Court in a civil case may appeal.
- (B) *Criminal Cases.* Any participant in a criminal case, except the prosecution, may appeal the judgment or sentence. The prosecution may appeal a decision to the extent it raises a question of law, rather than of fact.

5.204 *Right to Appeal.*

(A) *Civil Cases:*

1. *Constitutionality of Governmental Action/Inaction-Appeal by Right.* Appeals involving the constitutionality of any governmental action/inaction shall be as a matter of right.
2. *Other Civil Cases-Appeal by Leave.* The Tribal Court of Appeals shall have the discretion to grant leave to appeal in all other civil cases. The content of the "Notice of

Appeal" and the standards of review, Rule 5.401 of this Chapter, shall be the basis for the Court of Appeals exercise of discretion.

(B) *Criminal Cases:*

1. *Defendant.* All appeals by a defendant as to a finding of guilt or a sentence shall be as a matter of right.
2. *Prosecutor.* All appeals by the Prosecutor as to an issue of law shall be as a matter of right.

5.205 *Subject of Appeal.* An appeal is properly brought before the Tribal Court of Appeals if:

- (A) *Final Judgment, Order or Decree.* The judgment, order or decree of the Tribal Court is final;
- (B) *Disqualification of a Judge.* The appeal involves an order denying an appellant's motion for disqualification of a judge; or
- (C) *Substantial Right.* The appeal involves an order affecting a substantial right or claim which disposes of the matter as to that participant.

5.206 *Scope of Court's Review.* In reviewing a matter on appeal, the Tribal Court of Appeals may:

- (1) increase or decrease any sentence in a criminal case;
- (2) affirm, modify, vacate, set aside or reverse any judgment, order or decree of the Tribal Court;
- (3) award the costs of the appeal; and/or
- (4) remand the case to the Tribal Court and direct entry of an appropriate judgment, order or decree, or require such further proceedings as may be just and equitable under the circumstances.

Section 5.300. Procedure for Appeals

5.301 *Time period to Appeal.*

- (A) *Civil Cases.* An appeal to the Tribal Court of Appeals in civil cases must be filed no later than twenty-eight (28) calendar days after the entry of the written Tribal Court judgment, order or decree.
- (B) *Criminal Cases.* An appeal to the Tribal Court of Appeals in criminal cases must be filed no later than twenty-eight (28) calendar days after the entry of the written Tribal Court judgment, order or decree.
- (C) *Cross-Appeals.* Respondent may cross-appeal by filing a Notice of Cross-Appeal within twenty-eight (28) calendar days of service of the Notice Of Appeal.
- (D) *Untimely Appeals.* Subject to the exception contained in (E) below, failure to file an appeal within the time period provided in this Rule deprives the Tribal Court of Appeals of subject matter jurisdiction to hear the appeal. Late appeals shall be dismissed by the Tribal Court of Appeals unless leave for late filing has been granted.
- (E) *Grounds for Granting Late Appeal.* The Tribal Court of Appeals may, in its discretion, grant leave for a late filing of appeal from any judgment, order or decree upon a showing by the Appellant, supported by affidavit, that there is merit in the reasons for appeal and that the late filing was not due to the Appellant's or the Appellant's attorney/advocate's negligence.
- (F) *Expedited Appeals.* The Court of Appeals may, in its discretion, upon motion by a party, grant an expedited appeal from any judgment, order or decree upon a showing by the moving party, supported by affidavit, that irreparable harm will be caused unless the appeal procedure is expedited.

5.302 *Notice of Appeal.*

- (A) *Filing Required.* An appeal is made by the proper filing of a Notice of Appeal with the Court Clerk.
- (B) *Content of Notice.* The Notice of Appeal shall bear the caption and case number of the case in Tribal Court, and shall be labeled "Notice of Appeal". It shall state the date, judge, and content of

the judgment, order or decree being appealed, a brief statement of the reasons for the appeal, whether oral argument is requested and the relief requested from the Tribal Court of Appeals. The Appellant or the attorney/advocate appearing on behalf of the Appellant shall sign and date the notice.

(C) *Defects in Notice.* No appeal shall be dismissed for formal defects in the Notice of Appeal, if the matter appealed is clear from the document and it has been properly filed.

(D) *Docketing of Appeal.* Upon receipt of the Notice of Appeal and the filing fee, the Court Clerk shall notify the Justices of the pending appeal. The Chief Justice shall ensure timely docketing of the matter.

(E) *Effect on Judgment by Filing Appeal.* The filing of an appeal does not cause an automatic stay of the Tribal Court's judgment, order or decree.

5.303 *Service of Notice of Appeal.* A copy of the Notice of Appeal shall be served on all other parties by the Clerk of the Court of Appeals by first class mail. If the Clerk of the Tribal Court is a separate position from that of Clerk of the Tribal Court of Appeals, the Clerk of the Tribal Court shall also be served a copy of the Notice of Appeal. Proof of service shall be filed simultaneously with the Notice of Appeal.

5.304 *Appellate Filing Fee.* The Clerk for the Tribal Court of Appeals shall collect from every party that files an appeal or cross-appeal a filing fee of fifty dollars (\$50.00).

5.305 *Waiver of Fees.*

(A) *Applicability.* Only a natural person is eligible for a waiver of the appellate filing fees under this Rule.

(B) *Persons Receiving Public Assistance.* If a party demonstrates by ex parte affidavit that he/she is primarily supported by public assistance, the payment of fees required by law or court rule as to that party shall be waived.

(C) *Other Indigent Persons.* If a party demonstrates by ex parte affidavit that he/she is unable to pay fees required by law or court rule, the Court may order those fees waived.

(D) *Reinstatement of Requirement for Payment of Fees.* If the payment of fees has been waived under these Court Rules, the Court may on its own initiative order the person for whom the fees were waived to pay those fees, while the matter is pending, when the reason for the waiver no longer exists.

5.306 *Bond.* Upon notification of the filing of an appeal of a civil judgment, the Tribal Court may order the filing of a bond or cash equivalent thereof in an amount sufficient to guarantee payment or satisfaction of the judgment, including costs, in the event that the judgment is affirmed on appeal.

5.307 *Record of Appeal.* Upon receiving the Notice of Appeal, the Clerk of the Tribal Court shall timely compile for transmittal to the Tribal Court of Appeals the record of the case on appeal.

(A) *Pleadings, Orders, and Judgments.* All written documents filed with the Tribal Court, including pleadings, reports, notices, depositions, judgments, orders and decrees shall constitute the written record of the case on appeal. The Clerk of the Tribal Court shall certify the contents as true, correct and complete copies of the originals as part of the transmittal to the Court of Appeals.

(B) *Hearing Transcript.* The Appellant, Cross-Appellant, or Respondent may specify in writing to the Clerk of the Tribal Court which proceeding, or part of a proceeding, is required for review by the Court of Appeals. The cost of the transcript shall be paid by the party who requests the transcript. The Tribal Court may waive costs pursuant to a petition for waiver. The Clerk of the Tribal Court shall only prepare the portion(s) that have been requested. Requests for transcripts may be made no later than twenty-one (21) calendar days after the date of the Notice of Appeal. If no portions are requested, no transcript shall be made.

(C) *Notice of Record Transmittal.* The Clerk shall file a Notice of Transmittal of the Record, identifying each item included, together with a copy of any transcript, on each of the parties.

(D) *Effect of Transmittal.* No appeal issue may be considered by the Tribal Court of Appeals until the Notice of Transmittal has been filed with the Clerk of the Tribal Court of Appeals.

5.308 *Briefing.* Parties are encouraged to file written briefs, concerning the issue(s) on appeal, in order to assist the Tribal Court of Appeals in its review. The Tribal Court of Appeals may require the parties to file written briefs in its discretion if briefs would be helpful to the Court. The following requirements apply to the filing of a brief:

(A) *Format of Briefs.* Briefs shall be typewritten, double spaced, on white paper 8 1/2 by 11 inches in size. No brief shall exceed fifty (50) pages in length. Four (4) copies of each brief shall be submitted.

(B) *Content of Briefs.* The first brief to be filed shall contain a short statement of the case's history, a brief summary of the facts and a listing of the issues presented on appeal and how, if at all, the issues were decided by the Tribal Court. All briefs shall contain an argument and a conclusion, and state clearly the precise action sought from the Tribal Court of Appeals.

5.309 *Scheduling Conference.* The Chief Justice shall schedule an Appellate Scheduling Conference with the parties to establish the briefing schedule and to schedule Oral Argument.

5.310 *Oral Argument.* Pursuant to a timely written request by either party, or in the discretion of the Chief Justice, appeals will be scheduled for oral argument after the time for filing briefs has expired.

5.311 *Appeal of a Denial of a Stay.* If the Tribal Court denies a request for a stay of the judgment, order or decree under appeal, the Tribal Court of Appeals may consider the request. A stay may be granted by the Tribal Court of Appeals only if the purposes of justice require it and irreversible harm will occur if the stay is not granted. In determining whether to grant a stay, the Court shall consider the following:

(A) *Criminal Case.* In an appeal of a criminal case, the likelihood that Appellant will flee the jurisdiction of the Court during the pendency of the appeal, and the ability of the Appellant to post bond in lieu of incarceration during the pendency of the appeal;

(B) *Money Judgment.* In an appeal of a money judgment in a civil case, the existence of a bond pursuant to Section 5.306 of these Rules; or

(C) *Child Custody.* In an appeal of a child custody order, the existence of an order changing the custodian of the child.

5.312 *Motions Before the Tribal Court of Appeals.* Any party requesting action by the Tribal Court of Appeals on a matter unrelated to its decision on a pending appeal, such as a waiver of the filing fee or a stay pending appeal, shall file a motion with the Clerk of the Tribal Court of Appeals clearly stating the action requested and the reasons why the Court should do what is asked of it. The fee for a motion shall be paid upon filing. Any motion so filed shall be served on all other interested parties, who may file a response, within five (5) days of receiving the motion, with the Court indicating agreement or disagreement, along with reasoning, with the motion. The Tribal Court of Appeals shall issue a written order disposing of any motion filed.

Section 5.400. Decisions of the Tribal Court of Appeals

5.401 *Standard of Review.* The following standards apply to the Tribal Court of Appeals when deciding an appeal, unless a clear miscarriage of justice would result:

(A) *Judge Finding of Fact.* A finding of fact by a judge shall be sustained unless clearly erroneous.

(B) *Jury Finding of Fact.* A finding of fact by a jury shall be sustained if there is any credible

evidence to support it.

(C) *Factual Inference*. A factual inference drawn by a judge or jury shall be reviewed as a finding of fact if more than one reasonable inference can be drawn from the fact(s).

(D) *Witness Credibility*. Any finding, whether explicit or implicit, of witness credibility shall be reviewed as a finding of fact.

(E) *Conclusion of Law*. A conclusion of law shall be reviewed by the Tribal Court of Appeals *de novo*. (Reviewed as though it is the first time for this matter to be ruled on.)

(F) *Contracts*. An unambiguous contract term is reviewed as a conclusion of law.

(G) *Mixture of Law and Fact*. A matter which is a mixture of law and fact is reviewed by the standard applicable to each element.

(H) *Discretion of the Court*. A matter which is determined to be within the Tribal Court's discretion shall be sustained if it is apparent from the record that the Tribal Court exercised its discretionary authority and applied the appropriate legal standard to the facts.

(I) *Sentence or Penalty*. A sentence and the imposition of fine, forfeiture, and/or penalty, excluding the assessment of damages, shall be reviewed as a discretionary determination of the Tribal Court.

(J) *Substituted Judgment*. A matter committed to the discretion of the Tribal Court shall not be subject to the substituted judgment of the Tribal Court of Appeals.

5.402 *Issues Preserved on Appeal*. The Tribal Court of Appeals shall consider issues pursuant to the following requirements in deciding an appeal.

(A) *Issues Omitted*. The Tribal Court of Appeals will not consider issues that were not raised before the Tribal Court unless a miscarriage of justice would result.

(B) *Issues Raised*. An issue raised before the Tribal Court, but not argued either by brief or orally, shall not be reviewed by Tribal Court of Appeals.

(C) *Moot*. No issue which is moot at the time of argument shall be decided by the Tribal Court of Appeals unless it is capable of repetition, yet likely to evade appellate review, due to its nature.

(F) *Facts Omitted*. Facts which are not in the record shall not be presented in any manner to the Tribal Court of Appeals, and if presented, shall not be considered by that Court.

5.403 *Content of a Judgment, Order or Decree Appealed*. Judgments, orders or decrees subject to an appeal shall contain the following, in order to facilitate justice by the Tribal Court of Appeals.

(A) *Non-Jury*. In any proceeding tried by a Judge without a Jury, the Tribal Court shall issue in written form its opinions and orders, which shall state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court.

(B) *Civil Jury*. In any civil matter tried by a jury, if requested by either party or by the Court, the jury shall make a special verdict on each issue of fact placed before it.

(C) *Findings of Fact*. In the absence of findings of facts by the Tribal Court, the Tribal Court of Appeals may affirm the decision if supported by the record, reverse the judgment if it does not support it, or remand the case for the issuance of findings and conclusions.

5.404 *Decisions of the Tribal Court of Appeals*. All decisions of the Court on an appeal, and all determinations of motions, shall be made as follows:

(A) *Panel Majority*. Any decision of the Court of Appeals shall be made by the majority of the judges on the panel. If no majority is reached on a decision, the order of judgment of the Tribal Court is upheld.

(B) *Content*. In the exercise of its jurisdiction under Rule 5.205, the decision of the Court of Appeals shall be in written form, which shall state the facts, the issues to be decided, the rules of law applied, and the reasoning of the Court. The panel shall decide which of its members in the majority

shall write the decision.

(C) *Order.* The Court of Appeals shall issue an order conforming with the decision, which shall direct the Tribal Court in its disposition of the case which is the subject of appeal. Such order shall include the continuance or termination of any order relating to a stay and the posting of bond.

(D) *Precedent.* Decisions of the Tribal Court of Appeals shall be binding precedent for the Tribe.

(E) *Dissenting Opinions.* Any member of the panel who disagrees with the majority's decision may issue a written dissent, which shall comply with the content requirements of Rule 5.404(B).

(F) *Distribution of Decision.* Within five (5) days of issuance, the Clerk of the Court of Appeals shall transmit by first class mail a copy of the decision to each interested party at their address of record, and the Clerk of the Court of Appeals shall inform all of the date on which the decision was filed.

(G) *Official Reporter.* Any decision which determines an issue of law shall be retained and filed as Tribal substantive law, and may also be reported the *Indian Law Reporter*.

5.405 *Request for Reconsideration of Decision.* A request for reconsideration may be filed with the Clerk of the Court of Appeals, if made within fourteen (14) days of the decision's filing with the Clerk. A copy of the request must be served upon all other parties and on the Tribal Court.

(A) *Content.* The request must identify the exact element of the decision which is to be reconsidered, the reasons for the request, and any authority upon which the party relies.

(B) *Response.* Any other party may file a response to the request within ten (10) days of service.

(C) *Effect of Request.* A request for reconsideration shall stay all proceedings until the Tribal Court of Appeals issues its decisions on the matter.

(D) *Determination.* The panel which issues the decision which is the subject of the request shall also decide the request for reconsideration. The request may be granted or denied, and if granted, the parties are entitled to brief under Rule 5.308 and oral argument under Rule 5.310.

5.406 *Remand.* The Clerk of the Tribal Court of Appeals shall transmit the entire record of the Tribal Court, together with the decision and order of the Tribal Court of Appeals, to the Clerk of the Tribal Court within fifteen (15) days of the disposition of all post decision motions, if any. Upon such transmittal, jurisdiction over the case is returned to the Tribal Court from which the appeal was made.

Section 5.500. Court Administration

5.501 *Authority to Waive Requirements.* The Chief Justice may, upon good cause shown by written motion of a party, enlarge the time any party has to comply with these Rules, or waive the page limitation for briefing.

5.502 *Standards for Computing Time Requirements.* In computing the period of time prescribed by these Rules or by any order of the Tribal Court of Appeals, the day of the act or event from which the period begins to run is not included. The last day of the period is included, unless it falls on a Saturday, Sunday or Tribal Holiday. In that event, the last day of the period falls on the next regular business day.

5.503 *Requirements of Service.*

(A) *What Must Be Served.* Any paper, of whatever kind, which is filed with the Clerk of the Tribal Court of Appeals or the Clerk of the Tribal Court shall be served on each other party. Proof of that service shall also be filed.

(B) *Form of Service.* It is sufficient notification to other parties if service is made by first class mail. Service is considered complete upon mailing. Personal service on any party may be made if done in compliance with Tribal Court Rules.

(C) *Person Served.* Service shall be made upon the party's attorney or Tribal advocate, if any, and if the party is not requested, upon the party.

5.504 *Practice Before the Tribal Court.* Any person who is admitted to practice before the Tribal Court is thereby admitted to practice before the Tribal Court of Appeals.

5.505 *Rules of Court.* The Justices of the Tribal Court of Appeals may make or amend such rules as are deemed by them appropriate for the proper and efficient administration of the Tribal Court of Appeals. Such rules shall be filed with the Clerk of the Tribal Court of Appeals and made available as issued to all persons admitted to practice.

Section 5.600. Short Title and Effective Date

5.601 *Short Title.* These procedures shall be titled "Appellate Procedure".

5.602 *Effective Date.* These procedures become effective when adopted by the Tribal Judiciary of the Little River Band of Ottawa Indians and signed below by the Chief Judge and acting Court Administrator (*October 16, 1999*).

TRIBAL COURT RULES OF CIVIL PROCEDURE

Chapter 1. General Provisions

1.1 *Scope.* These *general* rules shall apply to Civil Proceedings in all Courts established by the Constitution and laws of the Little River Band of Ottawa Indians, unless otherwise expressly modified by a more specific court rule.

1.2 *Fees.* Fees for the purposes of this rule means the filing fees for commencing an action, motions and certification of copies as required by law or court rule.

(a) Only a natural person is eligible for the waiver or suspension of fees under this rule.

(b) Persons receiving Public Assistance are entitled to a waiver of fees required under these rules and any subsequent laws, provided that the assistance provides the primary source of their support. Proof of eligibility must be shown by ex parte affidavit filed with the Court.

(c) *Other Indigent Persons.* If a person can show by ex parte affidavit that s/he is unable to pay fees required by law or court rule, the Tribal Court may order those fees waived.

(d) *Affidavits.* An affidavit required under these rules may be signed by either the person(s) seeking the waiver, or any person(s) having personal knowledge of the facts required to be shown if the person(s) for whom the affidavit is made is unable to sign due to being a minor or other disability.

(e) *Reinstatement of Requirement to Pay Fees.* If payment has been waived or suspended under this rule the Court may on its own initiative order the person receiving the waiver to pay, when the reason for the waiver no longer exists providing the case is still pending or open.

1.3 *Costs.* Any other expense associated with a court action is considered costs. The Court may at its discretion waive costs if the conditions of 1.2 (a)-(d) are shown to exist. Should the conditions that allow for waiver change, then costs may be reinstated as in 1.2(e).

1.4 *Disqualification of a Judge.* Either party may by motion raise the issue of a judge's disqualification if that judge:

(a) Can be shown to have a personal or monetary interest in the matter other than that shared by a member of the Little River Band of Ottawa Indians,

(b) Has a family member as defined by spouse, parent, sibling or someone who resides within the judge's home involved in the case,

(c) Is personally prejudiced against one of the parties or attorneys,

(d) Has personal and prior knowledge of the facts in dispute other than knowledge held in common by any Tribal member,

(e) May be called to testify in the matter, or

(f) Acted as attorney/advocate for either party in the past.

After hearing on the motion to disqualify, If the Judge determines s/he should be disqualified the case will be reassigned to another judge of the Little River Band of Ottawa Indians Court.

Chapter 2. Commencement, Service, Pleadings and Motions

2.1 *Commencement of Action.* A "civil action" is any action brought to or by the Court to enforce, redress or protect private rights. A civil action is commenced upon filing of a Complaint with the Court.

(a) *Form.* Complaint shall be in writing, on 8.5" x 11" white paper with the heading in the upper left corner:

Court of Little River Band of Ottawa Indians
PO Box 314
Manistee MI 49660

Below that shall be the name and address of the plaintiff below which shall appear the name and address of the defendant.

On the right side of the page, even with the names of both plaintiff and defendant shall be a brief explanation of the issue (as examples, but not limits- In re: suit for \$xxx, or - civil infraction of ordinance #zzzz).

The space below the names and explanation is used for the body of the complaint. The Court's jurisdiction should be shown in this section.

Additional pages may be attached and should include a header or be titled so as to identify them as part of the complaint.

(b) *Summons.* On the filing of a Complaint, the Court shall issue a Summons to be served on all defendants as directed in these rules. The form of a Summons will include the following:

1. name and address of the court,
2. name of all the parties,
3. court file number
4. name and address of plaintiff's attorney, or plaintiff's address if they have no attorney,
5. defendant's address,
6. a copy of the Complaint,
7. date Summons was issued and last date which the Summons may be served before the Summons is invalid,
8. statement that the defendant is required to answer or take other action, within twenty-eight (28) calendar days after Summons is served,
9. notice that if the defendant fails to respond within the time allowed a judgement may be entered against the defendant.

(c) *Service of Process*

1. *Who may serve.* The Court shall designate a process server and only the Designated Process Server may serve. Exception: An enforcement officer must serve an action that includes possible forfeiture of property.
2. *Proof of Service.* Proof of service may be made by sworn written statement of the Designated Process Server who made service. Such statement should be returned to the Court and include time, place and other facts of the service. Proof may also include a receipt signed by the Defendant that acknowledges service. Failure to file proof of service will not invalidate service.
3. *Service by Mail.* If personal service is unavailable, service may also be completed by certified mail to the Defendant at the last known address of the Defendant with return receipt required.
4. *Substituted Service.* Service may also be allowed by posting a legal notice in a newspaper that serves the last known location of the Defendant. Such service if allowed by the Court is at the expense of the Party subpoenaing testimony.
5. Unless otherwise stated in these rules, every party to an action shall receive all subsequent papers, pleadings, etc. filed in connection with the action. Subsequent notices may be sent by regular mail.

(d) *Time.* A Defendant will have 28 days from date of service to answer or respond or take other action.

Chapter 3. Evidence.

3.1 Prior to a trial, at a conference scheduled for this purpose, the parties and the Judge will discuss the

evidence, legal theories and witnesses will be allowed. Only evidence that is material, reliable and not unduly prejudicial will be allowed. If a party requests, it is allowable to view property or a place where a material event occurred as evidence. Any evidence that becomes available after the trial has begun will have an evidentiary meeting prior to use or introduction in Court. Parties will provide all evidence in their favor to the Court for presentation to the opposition side prior to the evidentiary conference. At the conference parties may object to evidence, providing cause for objection.

Chapter 4. Trial, Conduct, Procedures, and Juries.

Unless governed by Ordinance or another rule of the Court, there will be held a pre-trial meeting to facilitate evidentiary issues or schedule the action for Court.

4.1 *Dismissal of action due to Lack of Progress.* An action may be dismissed if the Court finds no steps taken to continue after 45 days, unless the parties show why an action should be continued. Notice of the intent to dismiss will be sent to the parties, providing the date for action has passed. No notice may be sent prior to the date of scheduled events completion's having passed.

(a) On motion for good cause an action dismissed may be reinstated. Upon reinstatement the Court shall enter orders to facilitate the prompt and just disposition of the action.

4.2 *Adjournment.* Requests for adjournments of trials, hearings or pretrial conferences shall be made in writing or orally in open court. Each request shall state:

- (1) Party or parties seeking adjournment
- (2) Reason for adjournment
- (3) If there have been other adjournments

Adjournments that are granted will state whether it is the first or a subsequent adjournment and whose request it was (example- Plaintiff's Second Adjournment Request) and whether the other party agrees to adjournment.

(a) *Reason for Adjournment.* The Court may accept as reason for adjournment any cause it deems reasonable. As examples but not as limits are the following reasons:

1. *Absence of Evidence or Witness.* Adjournment may be granted if Court finds that diligent effort has been made to produce the evidence or witness and that the evidence or witness is material to the issue. If the adverse party stipulates to the testimony or evidence in writing or in open court no adjournment may be granted unless the Court deems one is necessary.
2. *Change in Status of Attorney.* Adjournment may be granted if a party's attorney has a change in status preventing continued service as attorney. As examples but not as limits of these changes:
 - a. Death of the attorney.
 - b. Incapacity of attorney due to illness, physical or mental.
 - c. Has right to practice suspended, is disbarred, resigns or is otherwise placed on inactive status.
 - d. Attorney is incarcerated or has a reasonable cause for their inability to be physically present.
3. Any other reason the Court deems reasonable may be permitted for the granting of an adjournment.

(b) *Rescheduling.* At the time the proceeding or action is adjourned the Court, the proceeding must be rescheduled for a specific date and time.

4.3 *Dismissal of Actions.* Actions before the Court may be dismissed in the following manners:

1. *Dismissal by plaintiff.* An action may be dismissed by the plaintiff upon filing of motion and

payment of fees. Such motion may be made prior to service to the adverse party or by stipulation signed by parties involved.

2. *Involuntary dismissal.* If the plaintiff fails to comply with these rules or a court order or if there is no basis for action in laws or claim, a defendant may move for dismissal of an action against that defendant.

(a) In an action tried without jury, after the presentation of the plaintiff's evidence the defendant, without waiving the right to offer evidence if motion is denied, may move for dismissal on the ground the facts and the law the plaintiff has no right to relief. The court may then determine the facts and render a decision, or may hold until all evidence is presented.

(b) Unless specified in the order of dismissal, any dismissal of an action under these rules operates as an adjudication on the merits. Exception to this rule is dismissal for lack of jurisdiction.

4.4 *Subpoena, Appearance, Order to Attend.* The Court may order or subpoena a party to appear for the purpose of testifying in open Court on a certain date and time and from time to time thereafter until excused by the Court, and to order documents, notes, records, papers, photographs, and other materials to be produced as specified.

1. *Form of Subpoena.* A subpoena must:

- a. Be entitled in the name of the Little River Band of Ottawa Indians,
- b. Be imprinted with the seal of the Little River Band of Ottawa Indians,
- c. Have typed the case designation, time and place of hearing in which the person subpoenaed is expected to testify in,
- d. Include a statement explaining that failure to appear may subject the person to whom the subpoena is directed to penalties for contempt of court,
- e. Include the signature of a judge of the court of the Little River Band of Ottawa Indians.
- f. Include payment of witness fees in amounts set by the Court,
- g. Show service the same as in Rule 2.1 c 2 & 3.

2. *Failure to testify or attend.* Anyone failing to comply with a subpoena served in accordance to these rules may be considered in civil contempt of this court and subject to fines, imprisonment or both. If a person refuses to be sworn in to testify, they may be considered in civil contempt of this court and subject to fines or imprisonment or both.

3. A person served with a subpoena may appear before the court in person or by writing to explain why they should not be compelled to comply with the subpoena. A person may be excused from compliance if the Court finds there is good cause for exemption.

4.5 *Conduct of Trial.*

(a) *Opening Remarks.* Prior to the introduction of evidence, the party, or their attorney, who is to begin the placing of evidence shall make a full and complete statement of that party's case and the facts they intend to prove. The adverse party will make the same statement prior to their own introduction of evidence. Either party may waive opening statements with the consent of the Court and other party. The Court may set a limit on the time allowed for opening remarks, but will give enough time giving due regard to the complexity of the action. The Court may also make separate times available for co-parties in a case.

(b) *Presenting Evidence.* Unless otherwise ordered by the Court, the plaintiff will present the evidence supporting their case first. The defendant will present the evidence supporting their case following the plaintiff. If the defendant admits facts and allegations of the plaintiff, they may be

ordered to present evidence first.

(c) Unless ordered by the Court only one person per party may examine or cross-examine any witness.

d) *Interpreters*. The Court may appoint an interpreter of its own choice and set reasonable compensation. Such compensation may be paid out of funds provided by law or taxed as fees to one or more of the parties at the discretion of the Court.

(e) *Closing Statements*. Closing statements may be waived by either party or both parties and their case rested. If not waived, the party that began the opening remarks shall give their closing statement first. The other party may then make their closing statement. The party who closed first may make rebuttal statement, but is limited to only those issues in the closing statements presented.

(f) *Agreements*. Any agreement or consent between the parties respecting the proceedings of an action must be made in open court or written and signed by the parties.

(g) *Fees*. Trial may not begin in a civil matter until such time as applicable fees have been paid to the Court.

4.6 *Jury Trial/Trial by the Court.*

(a) Any party may demand a trial by jury in any case where the right is guaranteed by the Tribal Constitution in Article III, section 1 (j). A jury may also be requested in cases where the monetary amount at issue is over \$2500. Applicable jury filing fees must be paid at the time of the demand or request. A party may be eligible for waiver of fees if they qualify under section 1.2 (a) of these procedures.

(1) Demand for jury must be filed with the Court within 30 days of First response or action taken. Such demand shall be in writing.

(2) Failure to file a timely demand for jury, or failure to pay jury filing fees as required waives the right to a trial by jury.

(b) *Selection of Jurors*. Any adult member of the Little River Band of Ottawa Indians who is a registered voter may serve on a jury. There shall be six jurors and one alternate selected from the pool of eligible persons.

1. Each person who is called for jury duty will file a personal information questionnaire provided by the Court Administrator's office with the Court Administrator's office.

2. Questionnaires will be kept confidential and only the Court, court personnel or parties involved in an action for which the juror has been called will have access.

3. Each potential juror may be examined by the Court and parties in any action.

4. Each side may challenge without cause one potential juror, and challenge for cause any potential juror. If challenged for cause the party shall state the cause and may question the juror to provide proof of cause. Acceptable causes for challenge include, but are not limited to: personal bias, conflict of interest as defined in the Tribal Constitution, is a witness in the case, is an immediate family member of a party or any other the Court finds reasonable.

5. Each juror chosen for duty shall swear the following oath:

"I, (name), do solemnly swear to hear the issue and render a true verdict based on the facts and the evidence presented and only the facts and evidence presented during the Trial in accordance to the instructions of the Court."

(c) *Instructions to and Verdict by Jury.*

1. Once sworn and before the opening remarks, the Court will instruct the jury as to duties of the jury, trial procedure and applicable law(s) so that they may reasonably hear the case before them.

2. At any time during the trial, with or without request, the Court may instruct the jury on a point of law or procedure that will make it easier for the jury to understand the proceedings and reach a fair verdict.

3. A party may object to the failure to give their requested instructions to the jury, or to the instructions given during the proceedings if they do so prior to continuing of proceeding. Opportunity to object outside of the jury's hearing will be allowed. Objection will state the nature and legal reason for the objection. A ruling on the objection will be made before the proceedings continue. If the finding is of an error existing, reasonable correction will be applied as necessary for fairness to the parties.

4. *Verdicts.* A verdict or a finding by a majority of the jury will be accepted as the verdict or finding of the jury. The jury will deliberate until a verdict is reached, or it is determined by the Court that no verdict will be forthcoming. The jury will return and announce the verdict in open court.

(a) A Party may request a verdict on specific issues.

(b) Either party may request a polling of the jury when the verdict is announced. Each juror will then be asked if they agree with the verdict. If less than a majority agree, the jury will return to deliberation.

5. *Trial by the Court.* An issue may be tried by the Court if there has been no demand or request for jury. If a jury is allowed by right, but has not been demanded, the Court may order trial by jury at its discretion.

(a) In all cases tried on facts without a jury the Court will find the facts specially, state separately its conclusions of law and direct the entry of any judgements.

Chapter 5. Judgements and Orders of the Court.

5.1 Every verdict or decision of the Court based on findings of fact or law shall lead to a final judgement being issued by the Court describing the relief to be received by the plaintiff, or other outcome of the trial.

(a) Except as in 5.1(b), the Court may grant relief to which the party in whose favor the judgement is rendered is entitled even if the party did not ask for that relief. No monetary relief may be granted where prohibited by the Constitution.

(b) In a default judgement, the Court may only grant that relief sought by the party and relief may not exceed that sought without prior Notice being given in same manner as Rule 2.1(b) & (c) stating the relief as possible in the default judgement. A "nonmilitary affidavit" must be filed prior to default judgment.

(c) The Court may grant declaratory relief in the same manner as any other relief sought where the Court has jurisdiction to grant relief. Granting declaratory relief is not precluded by the existence of other adequate relief, nor does it grant any other relief in and of itself.

5.2 *Court Orders.* Every final judgement of the Court will be in writing stating the relief granted and any orders, procedures or actions required as a result of the action.

(a) The form of the any order should be agreed to by the parties, except in default judgment, providing the court agrees that the form conforms to its findings and final decision. Orders will take immediate effect upon filing according to 5.2(c).

(b) The Court will sign and date any judgment or any order after 5.2(a) has been fulfilled at the time it grants the relief contained in the judgement or order.

(c) The judgment or order may be filed by the Court by placing on file in any action where the judgment is not reached in default.

(d) Default judgment is filed by a party serving notice on the default party as in 2.1(c) with notice that written objection may be filed within 7 days of receipt of Judgment or the judgment will take effect. Should objection be filed, settlement before the Court of the objection will occur within 7 days of objection. Such a settlement is treated as a non-default judgment of the Court, and may include any action deemed reasonable by the Court including, but not limited to: setting aside the judgment, rehearing the issue, or other modifications.

(e) Failure to comply with an order or judgment of the Court may lead to Civil or Criminal Contempt of Court charges being filed, which may lead to fines or imprisonment or both.

5.3 *Costs.* Costs may be allowed for the prevailing party unless prohibited by ordinance or by these rules or the Court directs otherwise in writing.

(a) If the prevailing party recovers less than \$100, they are entitled to costs equal to no more than the sum recovered.

(b) Attorneys costs and fees are not recoverable as costs, unless allowed by specific rule or law.

(c) The Court may issue an Order of Garnishment to recover costs allowed.

(d) Each item sought as costs must be listed separately on a bill of costs, which must be filed within 21 days, and may not include costs of service of documents.

(e) If the Court finds a claim or defense to be frivolous, it may award costs under this section.

Chapter 6. Appeals

6.1 *Who may Appeal.* Any party receiving an adverse decision which is a full or final determination may appeal that decision to the Little River Band of Ottawa Indians Appeals Court. In the case of multiple parties, one party not filing an appeal does not prohibit other parties involved from appeal.

6.2 *Appeal time limit.* Any party entitled to appeal must file the appeal or request for extension in writing with the Appeals Court Clerk or Court Administrator within 20 days of the signing of a judgement they are appealing.

6.3 Party appealing is responsible to obtain an Order from the Trial Judge delaying the Judgment or Order in the case while appeal is pending.

6.4 *Fees for appeal.* Appealing party or parties must pay fees for filing and any reasonable fees for reproduction of materials for the appeals court. A party eligible for waiver of fees in 1.2 (a) are eligible for waiver of fees here also.

6.5 *Scope of Court's Review.* The Appeals Court may affirm, modify, vacate, set aside or reverse any judgement, decree or order of the Tribal Court. It may also remand the case and direct entry of the appropriate order, judgement or decree, or order, or require further proceedings as may be just and equitable.

7. Short Title, Adoption and Effective Date.

7.1 These rules and procedures shall be titled "Civil Rules of Procedure".

7.2 When adopted by the Judiciary of the Little River Band of Ottawa Indians Tribal Court, shown by signatures below:

/s/ Daniel Bailey, Chief Judge; /s/ Jonnie Sam II, Court Administrator

7.3 These rules become effective on date: January 4, 1999.

TRIBAL COURT RULES OF CRIMINAL PROCEDURE

Note: These rules are also located in the Law and Order Regulations, Chapter R400 as a result of being adopted by the Law and Order Code, and are therefore not repeated here.

GDA DWENDAAGNANANIK PEACEMAKING GUIDELINES

Section 1. Establishment of Gda Dwendaagnananik (“All our Relations”).

1.01. The Tribal Government of the Little River Band of Ottawa Indians has established a Peacemaking System to be used in cooperation with the present court system for cases involving youth and children. Cases can be referred to Peacemaking through tribal courts, state courts, any federally recognized tribe, any state historic tribe or any Anishnabek of the Three Fires (Native people indigenous to this area) who would like to voluntarily access Peacemaking.

Section 2. Vision Statement.

2.01. The vision of Gda Dwendaagnananik is to provide a traditional conflict resolution process to children, youth and families. Through this process our hope is to give resolution and healing to the parties involved which will promote healthier life-styles and relationships.

Section 3. Philosophy.

3.01. The Peacemaking setting is much different from state court proceedings. Unlike the state court system which is divisive by its nature and involves a judge or jury making the decisions for others, Peacemaking encourages people to solve their own problems. Peacemaking sessions are conducted by two Peacemakers: one male and one female to create balance. Peacemaking involves:

- (1) discussing issues in a respectful manner;
- (2) assisting individuals with understanding and accepting responsibility for his/her wrongdoings;
- (3) promoting healthy relationships; and,
- (4) working with participants to plan and make group decisions about future actions.

Planning, respect and consensus in Peacemaking sessions replace imposed decisions which use punishment to correct behavior. Rather than judge people, Peacemaking addresses bad decisions and their consequences and substitutes healing in place of force.

Section 4. Purposes of Peacemaking.

4.01. Little River Band of Ottawa Indians Peacemaking System encourages people to solve their own problems in a safe environment. In Peacemaking decisions are reached through discussing the wrongdoing of the Child, and any underlying issues involving the family. In a Peacemaking session, the Peacemakers will use their own knowledge and draw from the customs and traditions of the Anishnabek of the Three Fires. The Peacemakers will strive to achieve a setting which will: (1) allow active participation from parents and families whose children are in trouble; (2) provide an environment for the wrong-doer to take responsibility for his/her wrongful behavior; (3) provide an environment that is safe for victims and wrong-doers to work out problems and begin the healing process; and (4) assist in locating traditional practices and teachings and community based services to children, youth, family members and others.

Section 5. Goals of Peacemaking.

5.01. One major goal of Peacemaking is to help children, youth, families, and other interested persons help themselves within the community. Through Peacemaking people within the immediate and extended family, as well as persons in the community will gather with the Peacemakers to address problems, acknowledge them and solve them in ways which will promote healthy relationships. The Peacemaking process will focus on strengthening families, responsible thinking and developing community based solutions to handle these

conflicts. The Peacemakers will work:

- (a) To improve family relations for Little River Band members and their children in the Tribe's nine county services area where they reside. These counties include: Manistee, Mason, Lake, Wexford, Oceana, Kent, Ottawa, Newaygo, and Muskegon.
- (b) To provide access to a traditional way of resolving disputes.
- (c) To provide a safe environment to handle cases involving children, youth and families.
- (d) To provide education within non-Native communities about Peacemaking and the Native American culture.
- (e) To find community based alternatives to keep children and youth within the Tribal community.
- (f) To assist in the treatment and rehabilitation of child and youth offenders.
- (g) To encourage parents, children and youth to work together in a good way.
- (h) To provide, at all times possible, alternatives to child and youth incarceration.

Section 6. Eligibility and Requests for Peacemaking.

6.01. *Eligibility.* The target group is children and youth in need of assistance and include:

- (a) Children and youth who have a case pending before the Little River Band of Ottawa Indians Tribal Court;
- (b) Children and youth who have a case pending before another tribal court;
- (c) Children and youth who have a case pending before the a state court in Michigan;
- (d) Members of federally recognized tribes, state historic tribes or any Anishnabek of the Three Fires who would like to voluntarily access Peacemaking to assist a child or youth.
- (d) Examples of possible Peacemaking sessions could include the following situations involving children and youth:
 - (1) a child-in-need-of-care;
 - (2) a delinquent offender who has committed minor offenses; and,
 - (3) a youth referred to Peacemakers from other federally recognized tribes;
 - (4) a referral from the Case Management Team explained further in the Juvenile Code;
 - (5) a representative from the school; and
 - (6) tribal or non-tribal social services referrals.

6.02. The Peacemaking System may hear the following types of cases:

- (a) All children and youth who are facing his/her first time status offense in the Little River Band of Ottawa Indians Tribal Court system. If Peacemakers are notified from another tribal court or state court, the case shall be transferred to Peacemaking. A status offense is a violation of criminal law due to the person's status as a minor. Examples of status offenses include: truancy, minor in possession of alcohol, and incorrigibility.
- (b) Non-status offenses, as determined by the Juvenile Code's Case Intake Team (CIT). Non-status offenses include all crimes that are considered felonies or misdemeanors regardless of a person's age. Examples of non-status offenses include: shoplifting, larceny, and assault.
- (c) Persons who want to voluntarily access Peacemaking.

6.03. *Case Referral.* A case involving a status offense or a first time non-status offense may be referred to the Peacemakers from the Little River Band of Ottawa Indians Tribal Court. Cases may also be referred from other tribal courts, state courts, tribal or state agencies, or upon request from an individual who is receiving services. There will be no other financial cost to participate in Peacemaking sessions. The Peacemakers retain the right to deny any case and a written response will be provided within the time lines outlines in Section 6.07.

6.04 *CIT Investigation.* All other cases shall be forwarded to the Family services Department to investigate the allegations and write a report that shall include recommendations. This report will be presented to the CIT. The CIT initial investigation shall be completed by Family Services within twenty (20) working days from receipt of the complaint. The investigator shall interview the child or juvenile, gather family background and evaluate the home environment. The investigator shall also talk to the victim(s) and gather information regarding the incident and request input. Based upon the information gathered, the social worker shall write a report which shall include recommendations and present it to the CIT.

6.05 *Case Intake Team.* The CIT, a multi-disciplinary group, shall convene on a regular basis and determine if the case should: (1) be delayed for prosecution in order to develop and implement an appropriate plan or (2) if it should be forwarded for prosecution in the Tribal Court.

6.06. *Time frame.* Any case plan arranged through this section shall be concluded within twelve (12) months. If at the end of 12 months the case plan has not been substantially followed, the CIT shall refer the case to the Presenting Officer to file a petition for formal adjudication.

6.07 *Review.* The CIT shall review the juvenile's progress every thirty (30) days. If at any time the CIT concludes that the juvenile is not working towards the goals of the plan, the CIT shall ask the Presenting Officer to file a petition for formal adjudication.

6.08. *Request for Gda Dwendaagnananik services.* To promote custom and traditions of the Anishnabek who are accessing Peacemaking; the person(s) shall request the services with an offering of tobacco, sweet grass, sage or cedar. If a person does not know how to request Peacemaking services, the Peacemakers will inform families of the traditional process for requesting services so that they may learn the proper protocol for accepting services. The Peacemakers retain the right to deny any case and a written response will be provided within the time lines outlined in Section 6.07.

6.09. *Processing Requests for Gda Dwendaagnananik sessions.* When the case has been received by the Tribal Court or if persons are accessing Peacemaking voluntarily, all cases will be referred to the Peacemaking Coordinator (if one exists) and then to the Volunteer Peacemaker Leader in the area. The Volunteer Peacemaker Leader will contact the Peacemaking Team who is next in line to hear a case and have them review it to decide if they would like to hear the case: Each Peacemaking team will be comprised of two peacemakers: one male and one female to create balance at each session. If they deny the case, it will be referred to a second Peacemaking Team to hear the case. If the case is denied a second time. The case will not be heard by the Peacemakers.

6.10 *Case Denial.* All denials must be made in writing stating the reasons denied and forwarded to the Volunteer Peacemaker Leader in the area who will forward copies to the Coordinator and Court. All of the denials must be made in writing and received by the Coordinator and/or the Court within the time lines outlined below. Cases will be referred back to the CIT if denied by the Peacemakers.

6.11. *Time Lines.*

(a) *Pending court case.* All cases that proceed under the Juvenile Code will comply with all applicable time lines.

(b) *No court case pending and child is not in custody.* A decision to accept or deny the case will be made by the Peacemakers within twenty working days of receipt of the request from the Peacemaker, Tribal Court Clerk or Peacemaker Coordinator. An initial Peacemaking session must be held within thirty working days after the decision is made.

Section 7. Intake Procedure.

7.01. *Introduction.* The Intake Procedure is the initial step of the Peacemaking process and therefore needs to establish the groundwork for the Peacemaking Session. The intake process shall be friendly, open and

educational for the participant(s), and the intake person shall listen to the concerns of the participant(s). The Gda Dwendaagnanani of the Courts of the Little River Band of Ottawa Indians and its personnel shall do the following to begin the Peacemaking process.

7.02. *Gathering Information.* The intake process must be completed before the Peacemaking session is held. The information must be gathered as completely as possible. This information shall be gathered on the Intake Form. See also Intake Form Attached to the Appendices. The Peacemaking Coordinator (if there is one) or the Peacemaking Team shall gather the following information:

- (a) Identify all person(s) requesting Peacemaking and interested in the issue. Include names, addresses, relationship and any other information that may be useful.
- (b) When each participant is interviewed, identify the nature of the problem and what each individual perceives to be the desired outcome.
- (c) Obtain all court information regarding the matter and/or any other information that would be useful to review prior to the Peacemaking session.
- (d) Identify and obtain addresses of any other names of persons who should be involved in the session.
- (e) Take all other steps necessary to assist the process.

7.03. *Scheduling and Notice of Peacemaking Session.* Following intake, the Peacemaker Team shall make prompt arrangements to:

- (a) Coordinate the location, date and time of the Peacemaking session at the convenience of the parties and the Peacemakers.
- (b) Give timely and written notice of proceedings to all interested persons.

7.04. *Form of Notice.* The notice shall contain the following information. See also Notice Form attached to Appendices.

- (a) Information in the notice must include:
 - (1) Time, date, location and the names of the Peacemakers that will be holding the sessions;
 - (2) Notice must be sent to the person's address or hand delivered by a person designated by Gda Dwendaagnanani.

7.05. *Forwarding Information for Peacemakers.* If the Peacemaker Coordinator or other intake worker gathers information, a copy of the entire case file shall be made and forwarded as soon as possible to the Peacemakers who will be working on the case. It is critical that the Peacemakers receive all information about the case in a timely manner. This information shall remain confidential. If any confidentiality is breached, the Peacemaker will be removed. See Section 12.

Section 8. Peacemaking Cases.

8.01. *Steps in Peacemaking Sessions.* The following is a guideline to conduct a Peacemaking session. These guidelines may be altered if the participants request with the exception of the CONFIDENTIALITY clause.

- (a) *Smudging* The Peacemakers will begin the session by smudging. Some or all of the participants may decide that they do not want to smudge and their decision shall be respected.
- (b) *Prayer* The session will open with a prayer which is appropriate for the participants and the occasion. A Peacemaker may lead the prayer or designate any person to open with the prayer.
- (c) *Preparatory Instructions*
 - (1) *Introductions* All of the participants will introduce themselves and the Peacemakers will explain the following ground rules:
 - (2) *History* Provide participants with information about Peacemaking, its history, philosophy

and purpose.

(3) *Rules* Describe the ground rules that all participants must follow during the Peacemaking session.

- (a) No cussing or name calling.
- (b) No interruptions.
- (c) Emphasize that everyone will have an opportunity to talk and help each other problem solve.
- (d) Explanation that Peacemaking is voluntary.
- (e) Judges and lawyers have no direct role in the Peacemaking session.
- (f) Describe the procedures and steps of Peacemaking.
- (g) Describe what the participants must do when the Peacemaking session does not work for them.
- (h) Describe how a Court may help Peacemaking and the participants with enforcement through a court order when the participants have failed to comply with the Peacemaking agreement.

(4) *Confidentiality* Explain CONFIDENTIALITY and its importance. This information must be explained to each person and each participant must agree to it. Aside from the agreement reached and signed by the parties, the work product and case file of a Peacemaker are confidential and not subject to disclosure in a judicial or administrative proceeding. Communications relating to the subject matter of the resolution made during the resolution process by a party, Peacemaker, or other person shall be a confidential communication. THE ONLY EXCEPTION the Peacemakers will make to this confidentiality policy is in cases of suspected child abuse. Peacemakers are required to report to the proper authorities cases where there is reasonable cause to suspect child abuse. See attached Confidentiality Agreement form.

(5) *Record Keeping*. Describe the Records Keeping function and its importance and purpose.

8.02. *Question/Investigation*. Each participant is encouraged to discuss the problems openly. The Peacemakers will help facilitate this discussion and ensure that there is balance, freedom to speak and concern for those who may be fearful of others or intimidated by the process

- (a) The objective is to reveal the problem, to make it clear so everyone see it, understand it and to deal with it.
- (b) Reiterate the purpose of Peacemaking so as to remind one another about the objectives.
- (c) Use as much traditional information as possible in the form of narratives and story telling to clarify and avoid direct shame and hostility. Also use it to reframe issues and to form specific strategies or tactics to be included in the formation of an agreement.
- (d) Be specific about time, date, function and assignment of what each person is going to do to satisfy an agreement.
- (e) Use active listening, encourage it to be used by everyone. Allow elders to give advice.

8.03. *Decisions/Recommendation*. The Peacemakers will decide and provide recommendations for the youth and family. The group must understand their "Agreement" is a legally binding contract.

8.04. *Sign Commitment Contract*. The agreement must be completed and signed. See Sample Agreement Form in attached Appendices.

8.05. Close with prayer and good blessing.

Section 9. Follow-up.

9.01. The purpose of follow-up by Peacemakers is to ensure participants are following the contract. In furtherance of this purpose the Peacemakers shall make all attempts necessary to ensure compliance with the agreement and these attempts must be documented. See attached Follow-up Forms in Appendices. These attempts include, but are not limited to:

- (a) Contacting participants to make sure that they are following the contract and time lines.
- (b) Contacting service providers to make sure that they are doing their work with participant(s).
- (c) Reporting data back to Volunteer Lead Peacemaker in the area or Peacemaking Office.

Section 10. Record Keeping.

10.01. There will be a lead Peacemaker in each area who will be responsible for keeping all opened Peacemaker cases in a locked file in his/her home. This person is also responsible for forwarding copies of all Peacemaking Agreements to the Tribal Court Clerk or to the Peacemaking Coordinator. When a case is closed, the entire file must be forwarded to the Tribal Court Clerk or Peacemaker Coordinator. All notes gathered throughout the course of the Peacemaking process shall be destroyed. See Confidentiality provision in Section 8.01(c)(4).

Section 11. Qualifications of a Peacemaker.

11.01. A Peacemaker is a person who:

- (a) is at least 21 years of age.
- (b) is a member of any federally recognized or state historic tribe or band.
- (c) is employed by the Tribe if the person is non-Native. The non-Native person's ability to remain a Peacemaker terminates when he/she is no longer employed by the Tribe.
- (d) is a volunteer.
- (e) does not use illegal drugs or abuse alcohol.
- (f) is non-judgmental.
- (g) avoids stereotyping.
- (h) provides a positive role model to others.
- (i) in his/her heart is truly willing to help others with conflict resolution.

Section 12. Selection of a Peacemaker.

12.01. The Volunteer Peacemaker Leader in the area or Peacemaker Coordinator shall gather a panel to assist in the selection of a Peacemaker process. This panel shall consist of an elder, a youth, a community member, a judge and a Peacemaker from the area. If this panel cannot be gathered, the Volunteer Lead Peacemaker in the area or Peacemaker Coordinator shall gather three tribal members to assist in the selection process. The decision to select a Peacemaker shall be made by consensus of the group. The Volunteer Lead Peacemaker or Peacemaker Coordinator shall not be able to vote in this process.

Question: Is this accurate? The group already has a Peacemaker from the area. Does one person not vote or do all take part in the process?

Section 13. Responsibilities of Peacemakers.

13.01. Peacemakers have the following responsibilities:

- (a) To participate in ongoing trainings.
- (b) To be timely for all meetings.
- (c) To conduct Peacemaking sessions.

- (d) To complete case follow up and proper case management.
- (e) To communicate with Volunteer Lead peacemaker in the area.

Section 14. Removal of Peacemaker.

14.01. Absences.

(a) *unexcused absences.*

(1) *Peacemaking Meeting.* Peacemakers must have an excuse to miss a meeting with the Peacemakers unless an emergency exists. If a Peacemaker misses three consecutive meetings the Peacemaker will be asked to attend the next meeting and explain the reason(s) for his/her lack of attendance.

(2) *Peacemaking Session.* If a Peacemaker fails to attend a Peacemaking session, this issue will be addressed by the entire Peacemaking Group.

(b) *excused absences.* If a Peacemaker would like to be excused for 30 days or longer, he/she must make this request in writing ahead of time. For regular meetings, a person may be excused by contacting a person in the group and at a later time notifying the Volunteer Lead Peacemaker or Peacemaker Coordinator.

(c) *punctuality.* Peacemakers cannot be late for a Peacemaking session with families. If this happens the Peacemaker who is late, as well as his/her partner must report to the group. Grounds for removal of one or both Peacemakers result if the person(s) fail to report the tardiness to the group.

14.02. *Abuse of alcohol or using illegal drugs will be addressed by entire group.* The alleged abuse must be made about a Peacemaker in writing and signed by the person. After the complaint is received, the Peacemakers shall hold a Peacemaking session with the alleged abuser.

14.03. *Breach of Client Confidentiality.* If a Peacemaker breaches client confidentiality will result in immediate removal.

14.04. *Resignation.* Must be made in writing and signed by the Peacemaker.

**GDA DWENDAAGNANANIK
INTAKE FORM**

This form must be completed for all participants involved in the Peacemaking process.

Child/ Youth Information

Name _____ Tribal ID _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____
Age _____ DOB _____

Family member(s) that child/youth is living: Mother Father Step-father Step-Mother
Other _____ Phone Number: _____
Tribal Status of persons in home: _____

Parents/Guardians Information

Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Are parents separated/ divorced/ never in a long term relationship (circle one)
Additional comments: _____

How was this case referred to Peacemaking (check one):

- ☐ Little River Band of Ottawa Indians Tribal Court
- ☐ Other Tribal Court Name _____
- ☐ State Historic Tribe Name _____
- ☐ Michigan State Court
- ☐ Individual accessed without court involvement

Summarize the reason(s) for referral:

Summarize how the child/youth is handling other areas in life (ie. home, school, social interaction):

Summarize how the child/youth would like to see this matter resolved (be specific):

Other persons who should be included in the Peacemaking Session

1. Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Briefly summarize the person's perception of how the child/youth is handling other areas in his/her life (ie. home, school, social interaction):

Briefly summarize how the person would like to see this matter resolved (be specific):

2. Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Briefly summarize the person's perception of how the child/youth is handling other areas in his/her life (ie. home, school, social interaction):

Briefly summarize how the person would like to see this matter resolved (be specific):

3. Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Briefly summarize the person's perception of how the child/youth is handling other areas in his/her life (ie. home, school, social interaction):

Briefly summarize how the person would like to see this matter resolved (be specific):

4. Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Briefly summarize the person's perception of how the child/youth is handling other areas in his/her life (ie. home, school, social interaction):

Briefly summarize how the person would like to see this matter resolved (be specific):

5. Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Briefly summarize the person's perception of how the child/youth is handling other areas in his/her life (ie. home, school, social interaction):

Briefly summarize how the person would like to see this matter resolved (be specific):

6. Name _____ Relationship to Child/Youth _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Briefly summarize the person's perception of how the child/youth is handling other areas in his/her life (ie. home, school, social interaction):

Briefly summarize how the person would like to see this matter resolved (be specific):

**GDA DWENDAAGNANANIK
NOTICE**

Please take notice that you are required to attend a Peacemaking Session to address issues involving _____. The Session will held on _____ at _____ .m. For this process to work well your attendance is important. If you have any questions or concerns about Peacemaking or this session, please contact one of the Peacemakers who will be facilitating the Peacemaking session. Their addresses and phone numbers are:

Name _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

Name _____
Address _____ Phone Number _____
City _____ State _____ Zip Code _____

If you have difficulty contacting the Peacemakers, please contact the Tribal Court Clerk or the Peacemaker Coordinator at the Little River Band of Ottawa Indians at: 1-800-723-8288.

**GDA DWENDAAGNANANIK
FOLLOW-UP**

Follow up is a critical step in the Peacemaking process. If the Court is involved in the case, non-compliance with the agreement requires a transfer back to the Court. This form should be used by each Peacemaker to document all follow up after an agreement has been reached by the Peacemaking participants.

Date of Agreement:_____

Date	Spoke with:	Compliance with Agreement

**GDA DWENDAAGNANANIK
SAMPLE AGREEMENT**

We, the undersigned do hereby agree to the following provisions listed below.

TO BE COMPLETED:

TIME LINE

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If this case has been referred from Court, we understand that if these provisions are not followed, this case will be referred back to Court.

Dated this ____ day of _____, _____.

_____	_____
_____	_____
_____	_____

**GDA DWENDAAGNANANIK
CONFIDENTIALITY AGREEMENT**

Communications relating to the subject matter of the resolution made during the resolution process by a party, Peacemaker, or other person shall be a confidential communication. THE ONLY EXCEPTION the Peacemakers will make to this confidentiality policy is in cases of suspected child abuse. Peacemakers are required to report to the proper authorities cases where there is reasonable cause to suspect child abuse. Aside from this agreement reached and signed by the parties, the work product and case file of a Peacemaker are confidential and not subject to disclosure in a judicial or administrative proceeding.

We, the undersigned have read and understand the confidentiality provisions regarding the peacemaking sessions.

Dated this ____ day of _____, _____.

_____	_____
_____	_____
_____	_____